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Division II  
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Cause No. 56240-5-II

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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FRANK WILLIAMS

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Respondent.

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APPELLANT'S OPENING BRIEF

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#### Appendix

WMS DSHS Position Description, Ward Program Administration.....	Appendix 1
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## **I. Introduction and Summary of Argument.**

Appellant, Frank Williams was not permitted to interview for the twenty-eight Ward Program Administrator positions created at Western State Hospital (“WSH”).

Although Mr. Williams had over twenty-five years of supervisory experience, eighteen years working with mentally ill patients at WSH, and a master’s degree in Organizational Leadership, he was blocked from even interviewing for the position, allegedly because his resume’ failed to highlight three years of supervisory experience. Mr. Williams asserts the reason he was excluded was because of his race (black), his age (72) and in retaliation for his opposition to racially discriminatory conduct at WSH in the past<sup>1</sup>. WSH hired younger and white applicants not meeting the health care experience, mental health experience or the supervisory experience in lieu of Mr. Williams.

Allegedly Mr. Williams was screened out of the process by Marylouise Jones because “...Plaintiff’s resume did not exhibit the managerial or supervisory experience sought by the Defendant of the position in question.” Ms. Jones was personally acquainted with Mr. Williams. She knew his age and race when she blocked him from moving forward in the recruitment process. The claim Mr. Williams was removed

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<sup>1</sup> The retaliation claim was dismissed on summary judgment because of the time lapse between Mr. Williams’ lawsuit with two other black WSH employees and the assertion by Marylouise Jones she was unaware of Mr. Williams’ prior claims.

from the process due to a lack of three years' supervisory experience reason is false, unworthy of belief and a pretext for ageism and/or racism. The jury should have been permitted to rule upon the question of discrimination being a substantial factor in his exclusion from the promotional opportunity.

Plaintiff's performance evaluations describe him in glowing terms as "exemplary" and a "model Institutional Counsellor." Cheryl Strange, the Chief Executive Officer of Western State Hospital encouraged him to apply after being impressed observing him performing his job and interacting with her. The court blocked Cheryl Strange from testifying at trial because she was too highly placed in the government, despite her first-hand knowledge and personal involvement in the case.

Despite Plaintiff's application and qualification for the Ward Program Administrator position, he was rejected, and the Defendant continued seeking applicants for the position. In fact, the Defendant hired several applicants for the position lacking any experience working with mentally ill patients, and several who had no health care experience at all.

At the conclusion of the Plaintiff's case, the court granted Defendant's Motion for Judgment as a Matter of Law dismissed a WLAD plaintiff's case preventing the jury from evaluating the evidence and ruling on Mr. Williams' WLAD claims that he was excluded from employment opportunities because of his race and/or age.

The Court erred in preventing the jury from ruling on Plaintiff's claims. The Court erred when it blocked Plaintiff from calling Cheryl Strange to appear as a witness at trial.

## **II. ASSIGNMENTS OF ERROR AND ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.**

### **A. Errors of the Superior Court**

- a. The court erred when it granted Defendant's Motion for Judgment as a Matter of Law pursuant to CR 50 at the conclusion of Plaintiff's case.
- b. The court erred when it granted Defendant's Motion to Quash Notice to Attend Trial of Cheryl Strange despite her personal knowledge of key events.

### **B. Issues Related to Assignments of Error.**

- a. What is the Standard of Review for the issues presented?
- b. In an employment discrimination case, what inferences in Plaintiff's favor must be drawn from the evidence when Ruling on a CR 50 Motion?
- c. In evaluating a CR 50 Order dismissing an employee's discrimination case, should the court apply the summary judgment decisions emphasizing the jury's critical role in viewing the evidence? Such decisions state: "Summary

judgment for an employer is seldom appropriate in employment discrimination cases because of the difficulty of proving discriminatory motivation. When the record contains reason but competing inferences of both discrimination and nondiscrimination, the trier of fact must determine the true motivation.”

- d. Is there evidence in the record from which a jury could conclude that the reasons for excluding Plaintiff from the selection process were pretext for discrimination and/or that Plaintiff was the victim of age and/or race discrimination?
- e. In a failure to hire or failure to promote case alleging discrimination what must Plaintiff show to allow a jury to decide whether the Plaintiff’s failure to hire or to promote was discriminatory?
- f. In a WLAD case should the Plaintiff be allowed to call a high-ranking government official to testify when that official has personal knowledge and firsthand information related to the claims?
- g. Should Plaintiff be awarded attorneys’ fees for work on the appeal if Plaintiff ultimately prevails in this lawsuit?

### **III. STATEMENT OF THE CASE**

#### **A. Appellant's Case Was Taken from the Jury and Improperly dismissed on Defendant's CR 50 Motion for Judgment as a Matter of Law.**

Appellant, Frank Williams ("Employee" "Job Applicant" or "Plaintiff") is a seventy-six-year-old black man. Verbatim Report of Proceedings (hereinafter "RP"), IV<sup>2</sup> RP 103. Defendant, Department of Social and Health Services ("DSHS", "Employer", or "Defendant") sought to fill twenty-eight (28) openings for the position of Ward Program Administrator in September 2016, III RP 30, Mr. Williams had been recommended to apply for the position by the CEO of Western State Hospital, Cheryl Strange after she observed him and had conversations with him and felt he would be "a great Ward Administrator.", RP 100, Ex. 58, 103 Strange Dep. p. 22-25<sup>3</sup>, 35-36.<sup>4</sup> Ms. Strange directed Marylouise Jones to invite Mr. Williams to apply. Ex. 58, Strange Dep. pg. 26; Ex. 56 Jones Dep. pg. 66-67. Mr. Williams was the only employee at Western State Hospital that CEO Strange directed Dr. Jones to encourage to apply

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<sup>2</sup> In preparing the transcript the Court Reporter did not consecutively number the transcript over the life of the trial, but began with a new page 1 for each day of the trial using Volumes I, II, III, IV and V. References to the Report of Proceedings will include the Volume number, followed by RP and the page reference in the appropriate Volume where the reference may be found., i.e., IV RP pg. x.

<sup>3</sup> The transcript of the Deposition of Cheryl Strange is included in record as Ex. 58, but the RP refers to it as Ex. 102. References to pages of the deposition transcripts will be stated as the exhibit number where the transcript may be found, the deponent's name and a page reference to the testimony. I.e.: Ex. 58, Strange Dep. pg. x. For Secretary Strange only the Ex. 58 reference will be used.

<sup>4</sup> In the depositions of Ms. Strange and Dr. Jones, there is reference to the Ward Program Administrator Position description. Trial Ex. 17. However, in the deposition it is referenced as Ex. 12, that misnomer was corrected on the record before each deposition was read for the jury. IV RP pg. 101; V RP pg. 3.

for the Ward Program Administrator job. Ex. 56, Jones Dep. pg. 91-92, 96.

Dr. Jones acted on that direction and sent Mr. Williams an email inviting him to apply. Ex. 56, Jones Dep. pg. 67, 72-74, that email is Ex. 3. IV RP, 143-44. Mr. Williams did apply for the job. Ex. 2, IV RP pg. 16-17

Yet Mr. Williams was not even granted an interview, he was rejected on October 26, 2016. Ex. 4, IV RP 16,17; 151-52. Despite Mr. Williams qualifications for the Ward Program Administrator position DSHS continued looking for applicants into December 2016 and beyond. IV RP pg. 10-21. Ms. Jones even sought to pull in applications from people who applied for different jobs and rejected the suggestion that previously rejected applications be reexamined, Ex. 55, IV RP pg. 12-16.

The key person who blocked Plaintiff from continuing in the process, Marylouise Jones Ex. 56, Jones Dep. pg. 9-12, 29-30, were aware of his race and age. Ex. 56, Jones Dep. pg. 66-74, 96-97. Rather than having the Human Resources Department do the initial screening of applications for minimum qualifications, Dr. Jones requested all applications be sent to her for the initial review. III RP pg. 32, 39. Dr. Jones claimed Mr. Williams' application materials did not show he met the minimum qualifications of three years of supervisory or management experience. Ex. 56, Jones Dep. pg. 80-87.

The position of Ward Program Administrator is a highly compensated position in Washington Management Service. See Position Description Trial Exs. 1, 17<sup>5</sup>, 70, 205, 215, 296. The position qualifications included a master's degree in Psychology, Sociology, Social Work, Social Sciences, Nursing or an allied field AND three years of supervisory and/or managerial experience...or a bachelor's degree AND five years of supervisory and/or managerial experience. *Id.* Preferred/ desired education, experience and competencies included clinical master's degree; *demonstration of core understanding of psychiatric recovery principles*, ability to set priorities for self and ward ability to work collaboratively and interact respectfully with diverse staff and patients, leadership, and management skills. *Id.* Mr. Williams applied for the positions. IV RP pg. 124-25. (Emphasis supplied).

Mr. Williams met the qualifications of the position with the related undergraduate and master's degree IV RP pg. 112-13; Ex. 56, Jones Dep. pg. 85-86, twenty-six years of supervisory experience in the Army, eight years as a lieutenant in an INS detention facility and eighteen years working as a counsellor with psychiatric patients working his way up to an Institutional Counselor 3, Ex. 2. IV RP pg. 116-124.

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<sup>5</sup> Exhibit 17, the WMS DSHS Position Description is a key exhibit and is attached to the brief as an appendix.



Prior to going to work at WSH Mr. Williams had a twenty-six-year career in the Army retiring as a First Sergeant. He assisted officers at the company level supervising 60 to 125 + soldiers. The First Sergeant (E-8) is referred to as “the life blood of the company: the provider, disciplinarian and wise counselor.” <https://www.army.mil/ranks/>. See Ex. 2. IV RP, pg. 104-112.

Following retirement from the Army he earned his bachelor’s degree with a minor in psychology and a master’s degree in organizational leadership. *Id.* pg. 112-113. He worked for the Immigration and Naturalization Service (INS) as a lieutenant. *Id.* at 113-116, In addition to being a shift supervisor as a lieutenant he managed the detention facility’s commissary. *Id.* pg. 144-45.

He began his career at WSH in 1998. *Id.* at 115-16.

CEO Strange made the decision to encourage Mr. Williams to apply for Ward Program Administrator after she was impressed from observing him leading a group in a community meeting and from discussions with Mr. Williams following her observation. Ex. 58, Strange Dep. pg. 34-36. CEO Strange even photographed Mr. Williams’ badge so she could remember his name because she thought he was a “great employee.” *Id.* 24, 34. The interaction between Mr. Williams and CEO Strange was actually observed by Marylouise Jones. Marylouise Jones’ Deposition (“Ex. 56, Jones’ Dep”) pg. 66, ln. 20 to pg. 71, ln. 3, 82-83 so she knew

his age to be between 40 and 60 and his race, African American. *Id.* pg. 71. Dr. Jones is the person who later determined Mr. Williams would not even get an interview.<sup>6</sup> Ex. 56, Jones Dep. pg. 80, ln. 25 to pg. 87, ln. 20. IV RP pg. 26-29; Ex. 57.

CEO Strange met with Marylouise Jones immediately after her encounter with Mr. Williams. She does not recall details of what they discussed beyond Mr. Williams apparent strengths to be a Ward Program Administrator. Ex. 58, Strange Dep. pg. 27, ln 20 to pg. 29, ln. 10. Ms. Jones remembers Ms. Strange telling her she thought Mr. Williams would be a good fit for Ward Program Administrator, but little else about that discussion that took place right after she watched Mr. Williams interact with CEO Strange. Ex. 56, Jones' Dep. pg. 82, ln. 17 to pg. 83, ln. 5. Ms. Jones, at some later date, at CEO Strange's direction, sent Mr. Williams an email encouraging him to apply for the Ward Program Administrator. Jones Dep. pg. 71, ln. 24 to pg. 74, ln. 13. Ex. 3, 19, 55, 295. IV RP, pg. Mr. Williams did apply. Ex. 4, 289.

Mr. Williams had been working at Western State Hospital as Psychiatric Security Attendant (PSA) and an Institutional Counsellor since

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<sup>6</sup> Joyce Stockwell, a long time DSHS employee and Director of Hospital Operations, also participated in the screening of applicants and concurred with the decision not to allow Mr. Williams to have an interview. Defendants assert that Jones and Stockwell were "included" among the screeners, implying that other unidentified people were involved in the screening decision as well. Ms. Stockwell did not testify at the trial either in person or by deposition.

1998, eighteen (18) years. IV RP pg. 115-16. He was an Institutional Counsellor 3 (“IC3”). Ex. 8. He was a licensed counsellor Ex 7. All of these are key attributes for the position description. Ex. 17.

His responsibility as an IC3 put him in charge of leading groups in the Psychiatric Treatment and Recovery Center and on different wards throughout the hospital during his eighteen years at WSH. IV RP pg. 116-24. In 2014, Mr. Williams had to bring an administrative action to have his position properly classified from an IC2 to an IC3. Ex. 8.

Mr. Williams’ work experience leading patients in treatment programs for almost twenty years gave Mr. Williams excellent insight into core psychiatric recovery principles and how to apply them in practice to ensure recovery-oriented care, work collaboratively with staff and patients to accomplish quality patient care and a thorough knowledge of state and federal standards for patient care and facility operations. IV RP pg. 116-24. This was the most important function of the position. Exs. 1, 17, 70, 74, 205, 215, 296.

The DSHS Position Description, Ex. 17 list the approximate percentage of time a Ward Program Manager would be engaging in specific types of duties. It was broken down into the following categories with percentages assigned: “Ward Program/Patient Care” 45%; “Staffing/Supervision” 35%; “Quality Assurance/Additional Duties” 15%; and “Other duties as assigned” 5%. Id.

Yet Mr. Williams was excluded and persons having no experience working with mental health patients were interviewed and hired, some had no experience working in health care at all. See the applications of the following successful applicants, Shawn Candella a 32-year-old white male, Ex. 26; Dave Chipchase, a 46-year-old white male, Ex. 27; Terry Gardner a 52-year-old black male, Ex. 29; Randy Granum, a 47 year old white male, Ex. 31; Susan Holmgren, a 37 year old white female, Ex. 33; Tyrone Jones, demographic information not revealed, Ex. 34; Jose Cancel Laquer, 29 year old Hispanic male, Ex. 35; Cheri Loiland, 61 year old white female, Ex. 36; Sean Mayo, 44 year old white male, Shawna Miller, 41 year old white female, Ex. 39; Zachary Sanchez, demographic information or qualifications not revealed, Ex. 42; James Scott, 45 year old white male, Ex. 43; John Scott, 49 year old black male, Ex. 44; Eva Thorton Vodden, 34 year old black female, Ex. 49, Warren Weasler, demographic or qualifications not revealed. Ex. 50; Marvin Williams, 42-year-old black male, Ex. 51; Sam Williams, 53-year-old white male, Ex. 52.

The demographic information on the applicants for Ward Program Administrator are set forth on Exs. 21, 68, 69. Of those hired there were five men and three women in their thirties, eight men and four women in their forties, three men and no women in their fifties and no men and two women in their sixties. *Id.* The oldest person hired was a white female

aged 65. All of the people hired for Ward Program Administrator were younger than Mr. Williams. *Id.*

The hire letters for the Ward Program Administrators may be found in Ex. 102.

Mr. Williams' WSH performance evaluations describe him in laudatory terms such as "model Institutional Counsellor," "exemplary" "having a solid teaching style," "Frank is an exemplary employee and a strong asset to TRC (Treatment and Recovery Center)," "Exceeds expectations. Frank embraces and practices the KSA's (Knowledge Skills and Abilities) with professionalism," "Mentors new staff members by demonstrating a high level of expertise. Exceeds expectations always. "He promotes the morale of the department by being a team player." "Great asset to the nursing department and WSH," "Mr. Williams is a dedicated provider of treatment with a high acumen of therapy skills. Ex. 9.

Mr. Williams was not allowed to even interview for one of the 28 vacant positions of Ward Program Administrator. Ex. 4, 292, III RP 17. The alleged reason Mr. Williams was screened out of the process by Marylouise Jones and Joyce Stockton was "...Plaintiff's resume did not exhibit the managerial or supervisory experience sought by the Defendant of the position in question." See Interrogatory Answer to Interrogatory No. 4. & 8, Exs. 56, 59, IV RP pg. 26-29. This is a specious, pretextual

justification to strike down Mr. Williams' before he could present to the interview panel, the jury saw right through it, but the Court refused to allow the case to proceed to the jury. CP 509-27.

DSHS had difficulty recruiting enough qualified persons for the 28 openings. III RP pg. 10-16, Ex. 55. Rather than reexamine Mr. Williams or others screened out for Ward Program Administrator, Dr. Jones made the determination that they should review applications people submitted for an entirely different job, Psychiatric Intensive Care Unit (PICU) Program Director. *Id.* She expressly did not want to reevaluate the previously rejected applicants and stated so in an email to Human Resources. III RP pg. See, Ex. 82 This email was not produced by the Defendant until after Ms. Jones had been deposed so she was not asked why she did not want to reevaluate the applicants.

A jury could conclude that Jones did not re-review the rejected applicants because she did not want to undo the exclusion of Mr. Williams even while she struggled to fill the vacancies. The jury could further conclude that even though she knew that Cheryl Strange the CEO of Western State Hospital had been impressed by Mr. Williams' demeanor and insight into operations at Western State Hospital and wanted him to be encouraged to apply, that Dr. Jones did not want to give Mr. Williams a shot at making a similar impression upon the interview panel. Only by precluding Mr. Williams from appearing before the interview panel could

she ensure Mr. Williams could not advance in the process and earn a promotion to Ward Program Administrator. Mr. Williams was prevented from having his qualifications, knowledge, skills, abilities, and demeanor considered by the interview panel to rank him and make their recommendation. Interestingly, no notes were kept from the interviews, nor did anyone keep a list of the questions asked of the candidates, one of which, presumably, would have been: “describe your supervisory experience” – and to Mr. Williams, “what did you mean by the phrase “25 years of supervisory skills” in your cover letter?

Mr. Williams was screened out of the Ward Program Administrator job and forced to watch many younger, less experienced employees get hired, including a thirty-three-year-old white female, Danielle Strassle with a criminal record IV RP pg. 33, who did not meet the minimum supervisory qualifications Ex. 56, Jones Dep. pg. 93-96 even though she had been placed into a special appointment to groom her and get her close to meeting the minimum three years of supervisory experience, Daniel Strassle. IV RP pg. 56-60 Ms. Strassle was a 33-year-old white female. Ex. 21.

Ms. Strassle, despite a criminal record IV RP pg. 33, while still on probation, was given an “emergency appointment” as a “Therapies Supervisor” IV RP pg. 56-60. Ms. Strassle was allowed to interview and

was selected for one of the Ward Program Administrator positions. Yet Mr. Williams was screened out and excluded from consideration.

**B. The Court Quashed Plaintiff's Notice to Attend Trial for a Key Witness.**

Prior to trial, the Defendant was served with a Notice to Attend Trial for WSH CEO Cheryl Strange to appear at trial pursuant to CR 45(f)(1), the Defendant moved to quash that notice CP 36-46; supported by the declaration of counsel, CP 47-243. Plaintiff opposed the motion. CP 264-400. Following argument, I RP pgs. 1-20, the court granted the motion. CP 422-23.

Defendant, Department of Social and Health Services ("DSHS", "Employer", or "Defendant") sought to fill twenty-eight (28) openings for the position of Ward Program Administrator in September 2016, III RP 30, Mr. Williams had been recommended to apply for the position by the CEO of Western State Hospital, Cheryl Strange after she observed him and had conversations with him and felt he would be "a great Ward Administrator.", RP 100, Ex. 58, 103 Strange Dep. p. 22-25, 35-36. Ms. Strange directed Marylouise Jones to invite Mr. Williams to apply. Ex. 58, Strange Dep. pg. 26; Ex. 56 Jones Dep. pg. 66-67. Mr. Williams was the only employee at Western State Hospital that CEO Strange directed Dr. Jones to encourage to apply for the Ward Program Administrator job. Ex. 56, Jones Dep. pg. 91-92, 96.



Dr. Jones acted on that direction and sent Mr. Williams an email inviting him to apply. Ex. 56, Jones Dep. pg. 67, 72-74, that email is Ex. 3. IV RP, 143-44. Mr. Williams did apply for the job. IV RP pg. 16-17. But Dr. Jones blocked his application.

#### **IV. LEGAL DISCUSSION**

##### **1. Standard of Review.**

##### **a. The Review on the CR 50 Judgment as a Matter of Law is De Novo with Inferences Drawn in Favor of the Job Applicant.**

In reviewing a trial court's decision to on a motion for directed verdict<sup>7</sup> or judgment n.o.v., this court applies the same standard as the trial court. This court reviews a motion for a Judgment as a Matter of Law *de novo*. *Schmidt v. Coogan*, 162 Wn.2d 488, 491, 173 P.3d 273 (2007). It makes no substantive difference in the standard of review whether the procedural mechanism for the trial court to arrive at its result was a motion for summary judgment, a motion for directed verdict, or a motion for judgment as a matter of law. *Caulfield v. Kitsap County*, 29 P.3d 738, 741–42, 108 Wn.App. 242, 249–50 (2001).

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<sup>7</sup> Motions for a directed verdict and motions for judgments notwithstanding the verdict were renamed “motions for judgment as a matter of law” effective September 17, 1993. *Litho Color, Inc. v. Pacific Employers Ins. Co.*, 98 Wn.App. 286, 298–300991 P.2d 638, 644–46 (1999) However, courts and attorneys continue to use the term “directed verdict” and that term is used in the Job Applicant’s Brief because it appears in the cited decision.

A directed verdict or judgment n.o.v. is appropriate if, when viewing the material evidence most favorable to the nonmoving party, the court can say, as a matter of law, that there is no substantial evidence or reasonable inferences to sustain a verdict for the nonmoving party. *Boeing Co. v. Sierracin Corp.*, 108 Wn.2d 38, 67, 738 P.2d 665 (1987). The requirement of substantial evidence necessitates that the evidence be such that it would convince “an unprejudiced, thinking mind” and mere theory or speculation is insufficient. *Hojem v. Kelly*, 93 Wn.2d 143, 145, 606 P.2d 275 (1980). Granting judgment as a matter of law is not appropriate where substantial evidence exists to sustain a verdict for the nonmoving party. *Id.* at 491. Indeed, “[a]n order granting judgment as a matter of law should be limited to circumstances in which there is no doubt as to the proper verdict.” *Id.* at 493. Substantial evidence is evidence adequate to support a jury's conclusion, even if the jury could also have drawn different conclusions from the same evidence. *Johnson v. Paradise Valley Unified Sch. Dist.*, 251 F.3d 1222, 1227 (9th Cir.2001)<sup>8</sup>. The court cannot substitute

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<sup>8</sup> Washington courts look to federal antidiscrimination law to construe the WLAD and we are “free to adopt th[e]se theories” that further the purposes of our state statute. *Kumar v. Gate Gourmet Inc.*, 180 Wn.2d 481, 491, 325 P.3d 193 (2014) (quoting *Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn.2d 355, 361–62, 753 P.2d 517 (1988)).

its view (or the moving party's view) of the evidence for the view of the jury. *Id.*

A directed verdict may be granted only if “there is no legally sufficient evidentiary basis for a reasonable jury to find or have found for that party with respect to that issue.” CR 50(a)(1). A trial court should grant a motion for a directed verdict only if, as a matter of law, no evidence or reasonable inferences exist to sustain a verdict for the nonmoving party. *Moe v. Wise*, 97 Wn.App. 950, 956, 989 P.2d 1148 (1999) (citing *Bender v. City of Seattle*, 99 Wn.2d 582, 587, 664 P.2d 492 (1983)). A motion for a directed verdict admits the truth of the evidence of the nonmoving party and all inferences that reasonably can be drawn therefrom. *Peterson v. Littlejohn*, 56 Wn.App. 1, 11–12, 781 P.2d 1329 (1989). The evidence must be considered in the light most favorable to the nonmoving party. *Id.*

The trial court may grant a directed verdict only when it can be held that as a matter of law, there is no evidence, nor reasonable inferences from the evidence, to sustain the verdict. *Peterson* 56 Wn. App. at 11-12, 781 P.2d 1329. The court must refrain from preventing the jury from deciding the case on the evidence in all but the clearest circumstance.

**b. In Reviewing an Order Granting Motion for Judgment**

**as a Matter of Law in the Context of the Job Applicant's  
Discrimination Claim the Court Must Consider the Issues of Proof  
Inherent in Discrimination Cases Which The Courts Have Stressed  
in Employment Discrimination Summary Judgment Review.**

It is significant that this is an employment discrimination claim under the Washington Law Against Discrimination, RCW 49.60, *et seq.* (WLAD) and RCW 49.44.090. The WLAD “shall be construed liberally for the accomplishment of the purposes thereof.” RCW 49.60.020. Such a “statutory mandate of liberal construction requires that we view with caution any construction that would narrow the coverage of the law.” *Marquis v. City of Spokane*, 130 Wn.2d 97, 108, 922 P.2d 43 (1996) (citing *Shoreline Cmty. Coll. Dist. No. 7 v. Dep’t of Emp’t Sec.*, 120 Wn.2d 394, 406, 842 P.2d 938 (1992)). The legislature declared “that practices of discrimination against any of its inhabitants ... are a matter of state concern [and] that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.” RCW 49.60.010. “The purpose of the statute is to deter and eradicate discrimination in Washington—a public policy of the highest priority.” *Lodis v. Corbis Holdings, Inc.*, 172 Wn.App. 835, 848, 292 P.3d 779 (2013) (citing *Marquis*, 130 Wn.2d at 109, 922 P.2d 43; *Xieng v. Peoples Nat’l Bank of Wash.*, 120 Wn.2d 512, 521, 844 P.2d 389 (1993)).

Where there are “*reasonable but competing inferences of both discrimination and nondiscrimination, ‘it is the jury’s task to choose between such inferences,’*”—not the courts. (Emphasis in original) *Mikkelsen v. Public Utility District No. 1 of Kittitas County*, 404 P.3d 464, 475, 189 Wn.2d 516, 535–36 (2017) (citations omitted).

“Direct, ‘smoking gun’ evidence of discriminatory animus is rare, since ‘[t]here will seldom be “eyewitness” testimony as to the employer’s mental processes.’ ” *Hill v. BCTI Income Fund-I*, 144 Wn.2d 172, 179, 23 P.3d 440 (2001) (second alteration in original) (quoting *U.S. Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 716, 103 S.Ct. 1478, 75 L.Ed.2d 403 (1983)). Accordingly, courts have repeatedly emphasized that plaintiffs may rely on circumstantial, indirect, and inferential evidence to establish discriminatory action. *Id.* at 180, 23 P.3d 440. “ ‘Indeed, in discrimination cases it will seldom be otherwise.’ *Id.* (quoting *deLisle v. FMC Corp.*, 57 Wn.App. 79, 83, 786 P.2d 839 (1990)). *Mikkelsen v. Public Utility District No. 1 of Kittitas County*, 404 P.3d 464, 470, 189 Wn.2d 516, 526 (2017).

Because intentional discrimination is difficult to prove, courts have adopted the evidentiary burden-shifting scheme announced in *McDonnell Douglas v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). *See Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn.2d 355, 362, 753

P.2d 517 (1988). “ ‘The shifting burdens of proof set forth in *McDonnell Douglas* are designed to assure that the plaintiff [has] his [or her] day in court despite the unavailability of direct evidence.’ ” *Hill*, 144 Wn.2d at 180, 23 P.3d 440 (alterations in original) (internal quotation marks omitted) (quoting *Sellsted v. Wash. Mut. Sav. Bank*, 69 Wn.App. 852, 864, 851 P.2d 716 (1993)). *Mikkelsen v. Public Utility District No. 1 of Kittitas County*, 404 P.3d 464, 470, 189 Wn.2d 516, 526 (2017).

In this case, the Court failed to let the jury evaluate the evidence and reach their own conclusion about why the seventy two year old, black, Job Applicant with more than three decades of supervisory experience and almost twenty years counselling mental health patients at WSH, where he was described as a “model Institutional Counselor,” was precluded from interviewing for the promotion, while younger, less qualified applicants, many of whom had no health care experience, let alone experience counselling mentally ill patients and no demonstrated understanding of core psychiatric recovery principles were hired for the position and Plaintiff did not even get an interview. See the applications of the following successful applicants, Shawn Candella a 32-year-old white male, Ex. 26; Dave Chipchase, a 46-year-old white male, Ex. 27; Terry Gardner a 52-year-old black male, Ex. 29; Randy Granum, a 47 year old white male, Ex. 31; Susan Holmgren, a 37 year old white female, Ex. 33;

Tyrone Jones, demographic information not revealed, Ex. 34; Jose Cancel Laquer, 29 year old Hispanic male, Ex. 35; Cheri Loiland, 61 year old white female, Ex. 36; Sean Mayo, 44 year old white male, Shawna Miller, 41 year old white female, Ex. 39; Zachary Sanchez, demographic information or qualifications not revealed, Ex. 42; James Scott, 45 year old white male, Ex. 43; John Scott, 49 year old black male, Ex. 44; Eva Thorton Vodden, 34 year old black female, Ex. 49, Warren Weasler, demographic or qualifications not revealed. Ex. 50; Marvin Williams, 42-year-old black male, Ex. 51; Sam Williams, 53-year-old white male, Ex. 52. The demographic information on the applicants for Ward Program Administrator are set forth on Exs. 21, 68, 69.

One person hired, Ms. Strassle was 34 years old IV RP pg. 32 was groomed for the promotion by WSH managers despite her criminal record of "petty theft." Ex. 14A, IV RP, pg. 34, 53-60. Her initial application for employment at WSH as an entry level social work showed no supervisory experience. Ex. 86, IV RP, pg. 35-38. The jury may have determined young white employees receive preferential treatment over older black employees, even if they have a criminal record.

**c. The Review on the Order Quashing Attendance at Trial of Key Management Witness appears to be Abuse of Discretion.**

There does not appear to be a case on point in Washington addressing the standard of review on a Motion to Quash a Notice to Attend Trial pursuant to CR 45(f)(1)<sup>9</sup>. The cases addressing CR 45(f)(1) typically focus on the sanctions for non-compliance and don't address the standard of review for enforcing or refusing to enforce compliance. It appears most analogous to the court's authority to admit evidence. Admission of evidence is within the sound discretion of the trial court, which we will not disturb on review absent a showing of abuse of discretion. *State v. Swan*, 114 Wn.2d 613, 658, 790 P.2d 610 (1990); *State v. Stubbsjoen*, 48 Wn.App. 139, 147, 738 P.2d 306 (1987).

Abuse occurs when the trial court's ruling was manifestly unreasonable, or discretion was exercised on untenable grounds. *State v. Finch*, 137 Wn.2d 792, 810, 975 P.2d 967 (1999); *State v. Gatalski*, 40 Wn.App. 601, 606, 699 P.2d 804 (1985). The appellant bears the burden of proving abuse of discretion. *State v. Hentz*, 32 Wn.App. 186, 190, 647 P.2d 39 (1982). The Job Applicant will proceed under the abuse of discretion standard, but if this court decides a more comprehensive standard of review is appropriate it will only strengthen the Job

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<sup>9</sup> *State v. Sweidan*, 13 Wn.App.2d 53, 60–78, 461 P.3d 378, 384–92, (2020) evaded the issue of standard of review on allowing a witness to testify by two-way video in a trial.



Applicant's position that a blocking a critical fact witness from testifying was not appropriate in a civil rights case under the WLAD.

Judicial discretion "means a sound judgment which is not exercised arbitrarily, but with regard to what is right and equitable under the circumstances and the law, and which is directed by the reasoning conscience of the judge to a just result." *State ex rel. Clark v. Hogan*, 49 Wn.2d 457, 462, 303 P.2d 290 (1956). A trial court's discretionary decision "is based 'on untenable grounds' or made 'for untenable reasons' if it rests on facts unsupported in the record or was reached by applying the wrong legal standard." *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (quoting *State v. Rundquist*, 79 Wn. App. 786, 793, 905 P.2d 922 (1995)). A court's exercise of discretion is " 'manifestly unreasonable' " if "the court, despite applying the correct legal standard to the supported facts, adopts a view 'that no reasonable person would take.' " *Id.* (quoting *State v. Lewis*, 115 Wn.2d 294, 298–99, 797 P.2d 1141 (1990)).

The Job Applicant should have been permitted to put on the stand the witness who interacted with him and found him to be a great prospect for a Ward Program Administrator, directed the hiring manager to encourage him to apply and that same hiring manager screened him out of

the process on specious grounds that he lacked the requisite three years of supervisory or management experience.

**2. The Court Committed Error When it Granted Defendant's CR 50 Motion Thereby Preventing the Jury from Considering Job Applicant's Evidence of Pretext or Discrimination.**

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By stepping in at the close of Plaintiff's case and deciding the case for the jury, the court perpetuated discriminatory stereotypes thereby thwarting an opportunity to redress a discriminatory failure to hire a well-qualified seventy-two-year-old, black Job Applicant. Scholars, using empirical studies, show that discrimination plaintiffs fare worse than all other litigants except for prisoner plaintiffs, *See e.g., Wendy Parker, "Lessons in Losing: Race Discrimination in Employment,"* 81 NOTRE DAME L. REV. 889, 890 (2006) ("*Lessons in Losing*"); Michael Selmi, "*Why Are Employment Cases So Hard to Win?*," 61 LA. L. REV. 555, 556-57 (2000-01) ("*Why Are Employment Cases So Hard to Win*"); Theresa M. Beiner, "*The Trouble with Torgerson: The Latest Effort to Summarily Adjudicate Employment Discrimination Cases,*" 14 NEV. L.J. 673, 673-74 (2014) ("*Trouble with Torgerson*"). They beg the question why courts increasingly reject most of these claims when there is still substantial evidence of bias in the workplace. *See Minna Kotkin, "Diversity and Discrimination: A Look at Complex Bias,"* 50 WM. & MARY L. REV.

1439, 1444 (2009) (“*Diversity and Discrimination*”). With race discrimination cases, judges are even more likely to agree with the defendant that they are right as a matter of law. *See* Parker, “*Lessons in Losing*”, at 934; Selmi, “*Why Are Employment Cases So Hard to Win*,” at 556-57. In cases involving intersectional identity—where the discrimination is based on a combination of protected identity—the odds are even lower. *See* Kotkin, “*Diversity and Discrimination*,” at 1459.

The Washington Supreme Court has observed that proving purposeful discrimination is difficult because people are ignorant of the actual reasons for their discrimination and/or they predictably refuse to admit it. *See, e.g., State v. Saintcalle*, 178 Wn.2d 34, 46-50, 309 P.3d 326, 335-337 (2013). (Abrogated on other grounds). “Racism now lives not in the open but beneath the surface—in our institutions and our subconscious thought processes—because we suppress it and because we create it anew through cognitive processes that have nothing to do with racial animus.” *See id.* 178 Wn.2d at 46, 309 P.3d at 335.

An important article on bias in the context of employment litigation is Williams, Korn & Mihaylo, “Beyond Implicit Bias: Litigating Race and Gender Employment Discrimination Using Data

from the Workplace Experience Survey” 72 Hastings Law Journal 337 (2020) which cites the often-cited identical resume study showing that “Jamal” needed to have eight more years of experience to get called for an interview at the same rate as “Greg.” Marianne Bertrand & Sendhil Mullainathan, “Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination”, 94 AM. ECON. REV. 991, 992 (2004).

Washington Court’s adoption of GR 37, requires trial court judges to evaluate allegations of racial bias in jury selection and deliberations in the shoes of an “objective observer.” GR 37 defines an objective observer as one who “is aware that implicit, institutional, and unconscious biases, in addition to purposeful discrimination, have resulted in the unfair exclusion of potential jurors in Washington state.” GR 37(f); *see also State v. Berhe*, 193 Wn.2d 647, 444P.3d 1172 (2019) (applying standard to jury deliberations). GR 37 applies to criminal and civil cases.

The Job Applicant was prevented by the hiring manager from interviewing for a promotion for which he had many desirable attributes. The trial court endorsed that behavior. The Chief Executive Officer of WSH thought Job Applicant was particularly well suited and had directed the hiring manager to reach out to encourage the Job Applicant to apply. Job Applicant submitted a cover letter and resume stating, “I have over

twenty-five years of supervisory skills, team building, and influencing men and women to work in a cohesive manner with each other to accomplish the job...,” Ex. 2. His resume showed Job Applicant’s decades of service as a United States Army First Sergeant and eight years as an Immigration Service Shift Lieutenant, and that he held a master’s degree in Organization Leadership, Ex. 2. It showed he had almost twenty years as an Institutional Counselor Ex.2, in which he had been described as a “model” employee, Ex. 8

While it is conceivable that the jury could disregard that information and concluded that it was not a pretext when Defendant asserted Job Applicant’s “application materials did not show he met the [three years of] minimum qualifications [for the Ward Program Administrator position] and his “resume did not exhibit the managerial or supervisory experience sought by the defendant for the position in question.” Ex. 59, 67, IV RP, pg. 26-29. Ex. 17 is the position description Dr. Jones referenced in her testimony. Ex. 56, Jones Dep. pg. 80-87.

The jury might have disregarded the hiring manager’s knowledge of the 72-year-old, black Job Applicant’s background. Ex. 56, Jones Dep. pg. 80-87.

The jury might have disregarded the fact that despite having been

encouraged to apply, that Job Applicant did Apply, showed many of the knowledge, skills and abilities for the position gained in 26 years' military service, 8 years' supervising an Immigration detention facility as a shift lieutenant, his Master's Degree in Organization Leadership, and his nearly twenty years as a "model" Institutional Counsellor" Ex. 8, and reached the same conclusion allegedly made by the hiring manager, his application materials failed to show the requisite three years supervisory experience. Specified in Ex. 17 and did not reveal the requisite supervisory or managerial experience. Ex,59, 67, IV RP pg. 26-29.

The jury might have ignored the fact that despite rejecting the Job Applicant, Ex. 4, that the hiring manager was having difficulty finding applicants to fill the Ward Program Administrator position, she was reluctant to review applicants screened out and even pulled applications for individuals who had not even applied for the job Ex. 55, IV RP pg. 10-21. The jury might not have questioned why the initial screening which blocked the Job Applicant from moving forward was done by the hiring manager and not human resources. III RP pg. 32, 39.

The jury might have ignored the position description for Ward Program Manager, Ex. 17, or types of duties and the percentage of time the successful candidate would typically engage in those duties in the Ward Program Administrator job or that the Job Applicant's experience in

the import category of caring for mentally ill patients exceeded that of successful applicants.

Ward Program Administrator duties were broken down into the following categories with percentages assigned: “Ward Program/Patient Care” 45%; “Staffing/Supervision” 35%; “Quality Assurance/Additional Duties” 15%; and “Other duties as assigned” 5%. *Id.* Under section IX Knowledge, Skills and Abilities Ex. 17 included “Demonstrate core understanding of psychiatric recovery principles and ability to put them into practice to ensure recovery-oriented care.”

This Job Applicant displayed for eighteen years Ex. 2 as a “model Institutional Counsellor.” Ex. 8. “Ability to work collaboratively and interact respectfully with diverse staff and patients to accomplish the hospital’s mission.” Ex. 17. Mr. Williams displayed those skills for years. Ex. 8. “Ability to set and maintain appropriate priorities for self and ward.” Ex. 17. Mr. Williams engaged in those activities at WSH daily for eighteen years. Ex. 2, IV RP pg. 116-124. Perhaps the jury would ignore Mr. Williams’ intimate knowledge of the care and treatment of mental patients at WSH. Perhaps the jury would ignore that persons hired for the job had no experience working in a mental hospital, no demonstrated “...core understanding of psychiatric recovery principles and ability to put them into practice to ensure recovery-oriented care for

all patients on assigned ward”<sup>10</sup> or any health care experience at all.

Inspect the applications of the following successful applicants for the depth of their experience working with psychiatric patients and compare them to the Job Applicant: Shawn Candella a 32-year-old white male, Ex. 26; Dave Chipchase, a 46-year-old white male, Ex. 27; Terry Gardner a 52-year-old black male, Ex. 29; Randy Granum, a 47 year old white male, Ex. 31; Susan Holmgren, a 37 year old white female, Ex. 33; Tyrone Jones, demographic information not revealed, Ex. 34; Jose Cancel Laquer, 29 year old Hispanic male, Ex. 35; Cheri Loiland, 61 year old white female, Ex. 36; Sean Mayo, 44 year old white male, Shawna Miller, 41 year old white female, Ex. 39; Zachary Sanchez, demographic information or qualifications not revealed, Ex. 42; James Scott, 45 year old white male, Ex. 43; John Scott, 49 year old black male, Ex. 44; Eva Thorton Vodden, 34 year old black female, Ex. 49, Warren Weasler, demographic or qualifications not revealed. Ex. 50; Marvin Williams, 42-year-old black male, Ex. 51; Sam Williams, 53-year-old white male, Ex. 52. The demographic information on the applicants for Ward Program Administrator are set forth on Exs. 21, 68, 69. Of those hired there were five men and three women in their thirties, eight men and four women in

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<sup>10</sup> Ex. 17, pg. 5. “IX Qualifications: Knowledge, skills and abilities.”



their forties, three men and no women in their fifties and no men and two women in their sixties. *Id.* The oldest person hired was a white female aged 65. All of the people hired for Ward Program Administrator were younger than Mr. Williams. *Id.* Mr. Williams was the only employee at Western State Hospital that CEO Strange directed the hiring manager, Dr. Jones to encourage to apply for the Ward Program Administrator job. Ex. 56, Jones Dep. pg. 91-92, 96.

Ultimately, the jury might have ignored all those facts.

But Defendant's motion for a Judgment as a Matter of Law admits the truth of the evidence of the nonmoving party, all inferences that reasonably can be drawn therefrom and evidence must be considered in the light most favorable to the nonmoving party. *Peterson v. Littlejohn*, 56 Wn.App. 1, 11-12, 781 P.2d 1329 (1989).

The jury might have concluded that Plaintiff's application materials showed the Job Applicant did meet the necessary qualifications for the position and he was particularly skilled in the Ward Program Administrator's core responsibilities of patient care. The jury could conclude that Defendant's stated reason for the hiring manager blocking the Job Applicant from going deeper into the process was false, unworthy of belief, and/or a pretext for a discriminatory exclusion. The jury should test the hiring manager's belief that a 72-year-old black man, with an

exemplary employment history at WSH as “model Institutional Counsellor,” holding a master’s degree in Organizational Leadership does not belong in the Washington Management Service (WMS), but that younger, often white applicants, or those with white sounding names like, “Terry” and “John” “Eva” and “Marvin” with no experience in mental health or even health care did deserve the position.

The jury may conclude that the hiring manager, knowing the Job Applicant’s race and age, Ex. 56, Jones’ Dep”) pg. 66, ln. 20 to pg. 71, ln. 3, 82-83, decided to remove the Human Resources manager for the initial screening to ensure the Job Applicant did not reach an unbiased screening panel. That the hiring managers decision not to review rejected applicants when she was struggling to fill the 28 vacancies to avoid reinserting the Job Applicant into the process where he could share his knowledge, skills and abilities evaluated by an unbiased interview panel. The jury could find the assertion the Job Applicant’s resume and cover letter failed to demonstrate the required three years of supervisory and/or management experience required for the position was false and/or unworthy of belief, particularly when he stated it eloquently and succinctly, “I have over twenty five years of supervisory skills, team building, and influencing men and women to work in a cohesive manger with each other to accomplish the job, and

as a result, I am confident that I can make a genuine contribution to Western State Hospital.” Ex. 2. Sufficient evidence exists for a jury to conclude the hiring manager’s action blocking the Job Applicant from going deeper into the process was motivated by his race and/or his age.

Ultimately, however, “ ‘the question of an employer’s intent to discriminate is “a pure question of fact.” ’ ” *Sischo–Nownejad v. Merced Community College Dist.*, 934 F.2d 1104, 1111 (9th Cir.1991) (citing *Lowe v. City of Monrovia*, 775 F.2d 998, 1008 (9th Cir.1985), *as amended*, 784 F.2d 1407 (1986) (quoting *Pullman–Standard v. Swint*, 456 U.S. 273, 287–88, 102 S.Ct. 1781, 1789–90, 72 L.Ed.2d 66 (1982))); *cf. St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 113 S.Ct. 2742, 2753–54, 2756, 125 L.Ed.2d 407 (1993) (existence of intentional discrimination is ultimately a question of fact). Where the evidence creates “reasonable but competing inferences of both discrimination and nondiscrimination,” a factual question for the jury exists. *Carle v. McChord Credit Union*, 827 P.2d 1070, 1077–78, 65 Wn.App. 93, 102–04 (Wn.App.,1992), 65 Wn.App. at 102, 827 P.2d 1070 (citing *United States v.*, 928 F.2d 575, 577 (2d Cir.), *cert. denied*, 502 U.S. 845, 112 S.Ct. 141, 116 L.Ed.2d 108 (1991)).

Defendant’s motivation is a jury question. This is particularly true

where there is strong evidence of pretext. What was the hiring manager's motivation to exclusion of Job Applicant from the hiring process for Ward Program Administrator as she struggled to fill vacancies and she knew the Job Applicant was an impressive candidate? All the jury needed to decide is that Defendant's explanations were pretext, untrue or unworthy of belief and that is sufficient to support a verdict for the Job Applicant. It is not the court's role to act as gate keeper and preclude the jury from weighing the evidence and the inferences drawn from the evidence.

**a. Pretext Alone is Sufficient to Support Job Applicant's Claim of Discrimination.**

The Court erred by preventing the jury from evaluating and ruling upon the evidence in this employment discrimination case. The court elected itself the gate keeper and that was reversible error.

Because intentional discrimination is difficult to prove, we have adopted the evidentiary burden-shifting scheme announced in *McDonnell Douglas*. See *Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn.2d 355, 362, 753 P.2d 517 (1988). "The shifting burdens of proof set forth in *McDonnell Douglas* are designed to assure that the plaintiff [has] his [or her] day in court despite the unavailability of direct evidence.' " *Hill*, 144 Wn.2d at 180, 23 P.3d 440 (alterations in original) (internal quotation marks omitted) (quoting *Sellsted v. Wash. Mut. Sav. Bank*, 69 Wn.App. 852, 864, 851 P.2d 716 (1993)).

Mikkelsen v. Public Utility District No. 1 of Kittitas County, 404 P.3d 464, 470, 189 Wn.2d 516, 526–27 (2017).<sup>11</sup>

Age discrimination claims are subject to *McDonnell Douglas* burden-shifting analysis. *Wallis v. J.R. Simplot Co.* 26 F.3<sup>rd</sup> 885, 888-9 (9<sup>th</sup> Cir. 1994). Race cases also use the *McDonnell Douglas* analysis. *Johnson v. Department of Social and Health Services*, 80 Wn.App. 212, 907 P.2d 1223 (1996).

*McDonnell Douglas*, also a failure to hire case, provides The Job Applicant has the initial burden of establishing a prima facie case of discrimination and must prove “(i) that he belongs to a racial minority [or age protected]; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.” *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668, (1973)

The establishment of a prima facie case “in effect creates a presumption that the employer unlawfully discriminated against the

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<sup>11</sup> *Mikkelsen* abrogated the requirement that an employment discrimination plaintiff must prove they were replaced by an individual outside the protected class. Rather, what is required in a failure to hire case is proof “the employer ‘sought a replacement with qualifications similar to his own, thus demonstrating a continued need for the same services and skills... (quoting *Loeb v Textron, Inc.* 600 F.2d 1003, 1013 (1<sup>st</sup> Cir. 1979.”

employee." *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 506 (1993).

The burden then shifts to the employer to show a legitimate, nondiscriminatory reason for its employment decision. See *McDonnell Douglas* 411 U.S. at 802. The burden then shifts back to the plaintiff to show that the employer's stated reason was pretextual. See *Id.* at 804 Plaintiff bears the ultimate burden of persuasion. See *St. Mary's Honor Center v. Hicks*, 509 U.S. at 507.

To demonstrate pretext indirectly, plaintiffs must offer evidence that the proffered reason for the employment decision is not worthy of belief. *Kuyper v. State*, 79 Wn.App. 732, 738, 904 P.2d 793 (1995). To show that the employer's justification is unworthy of belief, plaintiffs may show that the justification has no basis in fact, that the justification was not actually a motivating factor behind the employment decision, that the justification lacks sufficient temporal proximity to the employment decision, or that the justification was not a motivating factor in employment decisions regarding other employees in the same circumstances. *Id.* at 738–39, 904 P.2d 793; see *Cotton v. City of Alameda*, 812 F.2d 1245, 1248-49 (9th Cir.1987). "A plaintiff may satisfy the pretext prong using *one of the four factors* listed by the Court of Appeals, but the plaintiff may also satisfy the pretext prong by presenting sufficient evidence that discrimination nevertheless was a substantial

factor motivating the employer.” *Scrivener v. Clark College*, 181 Wn.2d 439, 448, 334 P.3d 541, 547, (2014) (emphasis supplied).

“Pretext can be shown by such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer’s proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons.” *Morgan v. Hilti*, 108 F.3d 1319, 1323 (10th Cir.1997) (citations and internal quotation marks omitted).

Because the ADEA prohibits discrimination based on age and not class membership, the fact that a replacement is substantially younger than the plaintiff is a far more reliable indicator of age discrimination than is the fact that the plaintiff was replaced by someone outside the protected class. *O’Connor v. Consolidated Coin Caterers Corp.*, 517 U.S. 308, 116 S.Ct. 1307, 134 L.Ed.2d 433 (1996). Here all the successful applicants were younger than Plaintiff and, in most cases, significantly younger. Ex.

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It does not matter that some of the persons hired for the Ward Program Administrator job were black or over age forty, although all were younger than Mr. Williams. The composition of most of an employer’s workforce being over age forty or of a WLAD plaintiff’s race does not

provide a safe harbor for employers, jurors should be allowed to determine if despite employer's contention of non-discriminatory motive for the employment decision, discrimination nevertheless was a substantial factor motivating the employer. *Mikkelsen v. Public Utility District No. 1 of Kittitas County*, 404 P.3d 464, 189 Wn.2d 516 (2017).

Washington's Law Against Discrimination contains a sweeping policy statement strongly condemning many forms of discrimination. RCW 49.60.010 requires that "this chapter shall be construed liberally for the accomplishment of the purposes thereof." RCW 49.60.020. Our legislature declared "that practices of discrimination against any of its inhabitants ... are a matter of state concern [and] that such discrimination threatens not only the rights and proper privileges of its inhabitants but **menaces the institutions and foundation of a free democratic state.**" RCW 49.60.010. (Emphasis Supplied) "The purpose of the statute is to deter and eradicate discrimination in Washington—a public policy of the highest priority." *Lodis v. Corbis Holdings, Inc.*, 172 Wn.App. 835, 848, 292 P.3d 779 (2013) (citing *Marquis*, 130 Wn.2d at 109, 922 P.2d 43; *Xieng v. Peoples Nat'l Bank of Wash.*, 120 Wn.2d 512, 521, 844 P.2d 389 (1993)). The court undermined the Job Applicant's opportunity to have his rights vindicated when it blocked the case from reaching the jury



despite ample evidence which the jury could accept as having demonstrated pretext and therefore proof of discrimination.

*Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000) is controlling because it held a plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated, without more. *Id.* at 148, 120 S.Ct. at 2109. Here, circumstantial evidence supports that the employer's asserted justification is false or unworthy of credence, including but not limited to the fact that a young, white person who lacked the three years of supervisory experience but was not old or black, and had not opposed Defendants' discriminatory practices in the past was interviewed and hired for the position, as were people who lacked any experience in providing care to the mentally ill, in some cases completely lacking any health care experience; the fact that virtually everyone hired for one of the 28 positions was at least a decade younger than Mr. Williams; and the fact that Defendants' technicality-based, hair-splitting position absolutely reeks of a post-hoc rationalization dreamed up in preparation for litigation.

Significantly, Defendants never informed Mr. Williams, a long-time accomplished and ostensibly valued employee, of the reason he was

not selected for an interview until *after* he sued. The Human Resources consultant even suggested to the hiring manager that she do so. Ex. 55, 79, IV RP, pg. 17-21. Defendant was having a hard time filling all of the vacancies after rejecting plaintiff. Ex. 55, IV RP pg. 12-16.

Plaintiff asserts that he was prevented from appearing before the interview panel for the twenty-eight (28) Ward Program Administrator positions because Defendant's decision makers were substantially motivated by unlawful discriminatory reasons or race and/or age.

**b. Defendant's Selection of Individuals with Inferior Experience in Mental Health and/or Health Care is Sufficient to Support Job Applicant's Claim of Discrimination.**

The DSHS Position Description form Ex. 17 spells out a detailed description for the minimum qualifications and duties of the Ward Program Administrator position for which the Job Applicant had applied. IV RP pg. 16-17. The black, 72-year-old Job Applicant had the required attributes and experience. Ex. 2, IV RP pg. 104-124. The hiring manager prevented him from being considered by the hiring panel. Ex. 4, IV RP 16,17; 151-52; Ex. 56, Jones Dep. pg. 80-87.

Yet, less qualified applicants, many of whom had no health care experience, let alone experience counselling mentally ill patients were hired for the position and Plaintiff did not even get an interview. See the applications of the following successful applicants, Shawn Candella a 32-

year-old white male, Ex. 26; Dave Chipchase, a 46-year-old white male, Ex. 27; Terry Gardner a 52-year-old black male, Ex. 29; Randy Granum, a 47 year old white male, Ex. 31; Susan Holmgren, a 37 year old white female, Ex. 33; Tyrone Jones, demographic information not revealed, Ex. 34; Jose Cancel Laquer, 29 year old Hispanic male, Ex. 35; Cheri Loiland, 61 year old white female, Ex. 36; Sean Mayo, 44 year old white male, Shawna Miller, 41 year old white female, Ex. 39; Zachary Sanchez, demographic information or qualifications not revealed, Ex. 42; James Scott, 45 year old white male, Ex. 43; John Scott, 49 year old black male, Ex. 44; Eva Thorton Vodden, 34 year old black female, Ex. 49, Warren Weasler, demographic or qualifications not revealed. Ex. 50; Marvin Williams, 42-year-old black male, Ex. 51; Sam Williams, 53-year-old white male, Ex. 52. The demographic information on the applicants for Ward Program Administrator are set forth on Exs. 21, 68, 69.

To establish a *prima facie* case of discrimination for a failure-to-hire claim under Title V II, a plaintiff must show that (1) he belongs to a racial minority; (2) he applied for and was qualified for a job for which the employer was seeking applicants; (3) despite his qualifications, he was rejected; and (4) after his rejection, the position remained open and the employer continued to seek applicants. *Norris v. City & Cnty. of San Francisco*, 900 F.2d 1326, 1329–30 (9th Cir.1990). Plaintiff was qualified

and he was rejected. It is a jury question if his age and/or race was a motivating factor where he significantly exceeded the minimum qualifications and the hiring manager kept seeking applicants, even from those who had not applied. Ex. 55, III RP pg. 10-16,

**c. The Court Erroneously Required Plaintiff to Prove Job Applicant Blocked from the Recruitment Process Would Have Been Hired for the Promotion.**

In ruling on the CR 50 Motion the court identified itself as the “Gate Keeper” V RP pg. 20, and that the jury would have to “speculate as to whether he would have been selected for a position.” *Id.* pg. 22.

Those are jury questions that the jury should have been allowed to rule upon. *Mikkelsen v. Public Utility District No. 1 of Kittitas County*, 404 P.3d 464, 475, 189 Wn.2d 516, 535–36 (2017) is controlling in the use of the *McDonnell Douglas* framework. When a position remains open, and the employer continues to seek applicants “with qualifications” similar to the plaintiff there is a rebuttable presumption of discrimination.

Here, the Defendant kept seeking to fill 28 positions. Pulled applications from people who did not ever apply for the job. Ex. 55, 67 IV RP pg. 12-16. It hired a number of people with no health care experience even though the Ward Program Administrator Position Description, Ex. 17, noted that 45% of the job entailed Ward Program/Patient Care, whereas only 35% related to Staffing/Supervision. Another 15% dealt

with “Quality Assurance/Additional Duties” which again focused on patient care and compliance with staff training, working with nursing and compliance with CMS standards, and hospital policies/procedures” *Id.*

It was for the jury to determine why Job Applicant was excluded from the process where the employer was having difficulty filling 28 vacancies, had been informed by the CEO that Job Applicant would be a “great Ward Program Administrator,” Ex. 58, 103 Strange Dep. p. 22-25, 35-36, sent the Job Applicant an email encouraging him to apply Ex. 3, and then went on to hire candidates lacking Plaintiff’s experience as a licensed counsellor, Ex. 7, with eighteen years’ experience at WSH. Ex. 2, and exemplary performance evaluations where he was described as “an exemplary employee and a strong asset to the TRC,” “exceeds expectations always,” “an exceptional role model,” “a dedicated provider of treatment with a high acumen of therapy skills,” “a strong team player,” and a “model Institutional Counselor in attitude, communication and performance.” Ex. 9.

Yet the hiring manager, uniquely aware of Mr. Williams’ screened him out and went on to allow people with no mental health treatment experience and in some instances no health care experience at all to pass on to the interview panel and be hired. Shawn Candella a 32-year-old white male, Ex. 26; Dave Chipchase, a 46-year-old white male, Ex. 27;

Terry Gardner a 52-year-old black male, Ex. 29; Randy Granum, a 47 year old white male, Ex. 31; Susan Holmgren, a 37 year old white female, Ex. 33; Tyrone Jones, demographic information not revealed, Ex. 34; Jose Cancel Laquer, 29 year old Hispanic male, Ex. 35; Cheri Loiland, 61 year old white female, Ex. 36; Sean Mayo, 44 year old white male, Shawna Miller, 41 year old white female, Ex. 39; Zachary Sanchez, demographic information or qualifications not revealed, Ex. 42; James Scott, 45 year old white male, Ex. 43; John Scott, 49 year old black male, Ex. 44; Eva Thorton Vodden, 34 year old black female, Ex. 49, Warren Weasler, demographic or qualifications not revealed. Ex. 50; Marvin Williams, 42-year-old black male, Ex. 51; Sam Williams, 53-year-old white male, Ex. 52. The demographic information on the applicants for Ward Program Administrator are set forth on Exs. 21, 68, 69. Of those hired there were five men and three women in their thirties, eight men and four women in their forties, three men and no women in their fifties and no men and two women in their sixties. *Id.* The oldest person hired was a white female aged 65. All the people hired for Ward Program Administrator were younger than Mr. Williams. *Id.*

It was for the jury to decide why the hiring manager blocked Mr. Williams from competing for the vacancies which she was having such a hard time filling.

**3. The Court Abused Its Discretion by Preventing Job Applicant from Calling a High-Level Government Employee with Direct Personal Knowledge Specific to the Job Applicant and the Recruitment to Testify at the Job Applicant's Trial.**

Defendant moved to Quash Plaintiff's Notice to Attend Trial ("Motion to Quash") that was directed pursuant to CR 43(f) to Cheryl Strange. CP 36-46. That motion was supported by the Declaration of Asst. Attorney General Aaron Young and exhibits consisting of deposition transcripts and e-mail communications. CP 47-243. Plaintiff opposed the Motion to Quash providing legal authority CP 364-75; and provided Declaration of Counsel with exhibits CP 276-400; Defendant filed a Reply CP. 401-405. Following argument, I RP 1-20, the court granted the Defendant's Motion to Quash. CP 422-23.

Ms. Strange was the CEO of Western State Hospital during the recruitment at issue in this failure to hire case. At the time of the Motion to Quash she had been promoted to the position of Director of Defendant DSHS, the position she held at the time of trial.

Defendant, Department of Social and Health Services ("DSHS", "Employer", or "Defendant") sought to fill twenty-eight (28) openings for the position of Ward Program Administrator in September 2016, III RP 30, Mr. Williams had been recommended to apply for the position by the

CEO of Western State Hospital, Cheryl Strange after she observed him and had conversations with him and felt he would be “a great Ward Administrator.”, RP 100, Ex. 58, 103 Strange Dep. p. 22-25, 35-36. Ex. Ms. Strange directed Marylouise Jones to invite Mr. Williams to apply. Ex. 58, Strange Dep. pg. 26; Ex. 56 Jones Dep. pg. 66-67. Mr. Williams was the only employee at Western State Hospital that CEO Strange directed Dr. Jones to encourage to apply for the Ward Program Administrator job. Ex. 56, Jones Dep. pg. 91-92, 96.

Dr. Jones acted on that direction and sent Mr. Williams an email inviting him to apply. Ex. 56, Jones Dep. pg. 67, 72-74, that email is Ex. 3. IV RP, 143-44. Mr. Williams did apply for the job. IV RP pg. 16-17.

The Court Rules specifically allow for the use of a Notice to Attend Trial as a means of obtaining critical testimony for a key officer of Defendant at trial. The rule provides in relevant part as follows:

#### RULE 43. TAKING OF TESTIMONY

**(f) Adverse Party as Witness.**

**(1) Party or Managing Agent as Adverse Witness.** A party, or **anyone who at the time of the notice is an officer,** director, or other managing agent (herein collectively referred to as “managing agent”) of a public or private corporation, partnership or association which is a party to an action or proceeding **may be examined at the instance of any adverse party.** Attendance of such deponent or witness may be compelled solely by notice (in lieu of a subpoena) given in the manner prescribed in rule 30(b) (1) to opposing counsel of record. **Notices for the attendance**



**of a party or of a managing agent at the trial shall be given not less than 10 days before trial** (exclusive of the day of service, Saturdays, Sundays, and court holidays).

For good cause shown in the manner prescribed in rule 26(c), the court may make orders for the protection of the party or managing agent to be examined.

(2) *Effect of Discovery, etc.* **A party who has served interrogatories to be answered by the adverse party or who has taken the deposition of an adverse party or of the managing agent of an adverse party shall not be precluded for that reason from examining such adverse party or managing agent at the trial.** Matters admitted by the adverse party or managing agent in interrogatory answers, deposition testimony, or trial testimony are not conclusively established and may be rebutted.

(3) *Refusal to Attend and Testify, Penalties.* **If a party or a managing agent refuses to attend and testify before the officer designated to take the party's deposition or at the trial after notice served as prescribed in rule 30(b)(1), the complaint, answer, or reply of the party may be stricken and judgment taken against the party, and the contumacious party or managing agent may also be proceeded against as in other cases of contempt.** This rule shall not be construed:

(A) to compel any person to answer any question where such answer might tend to be incriminating.

(B) to prevent a party from using a subpoena to compel the attendance of any party or managing agent to give testimony by deposition or at the trial; nor

(C) to limit the applicability of any other sanctions or penalties provided in rule 37 or otherwise for failure to attend and give testimony.

CR 43(f) (Emphasis added).

Defendants' entire argument revolves around the erroneous claim that because the Plaintiff took discovery depositions, including a CR 30(b)(6) deposition there is no need for live testimony at trial from Ms.

Strange about her interactions with Plaintiff or the other important matters for which she has personal knowledge. CP 36-243; The CR 37(f)(2) language itself puts that issue conclusively to rest, that discovery of Interrogatories, or depositions has been conducted "...shall not be precluded for that reason from examining such adverse party or managing agent at the trial." *Id.*

The chief case upon which Defendant's argument rests is *Clarke v. Office of Attorney Gen.*, 133 Wn. App. 767, 1368 P.2d 144 (2006). In *Clarke* a receptionist/clerk in the Attorney General's Office (AGO) in Tacoma sued for hostile work environment after she resigned shortly before being terminated. When faced with a summary judgment motion she sought to take the deposition of Christine Gregoire who had been the Attorney General but was then the Governor of the State. Finding her motion to compel was not timely, the Court engaged in *dicta* to address the issue of a high-ranking official being called to testify. Ms. Clarke asserted Gregoire had first-hand knowledge about (1) developing defenses in discrimination cases; (2) hiring, termination and promotion of employees; and (3) properly managing the AGO. The court observed, "Further, the record does not indicate that she had any personal knowledge about Clarke, Clarke's termination, or the incidents

surrounding the termination. Nor did she directly manage the Tacoma AGO. “

Unlike the Clarke case, Cheryl Strange had relevant first-hand knowledge, personal interaction with Job Applicant, managed Western State Hospital and has much personal knowledge of issues related to this lawsuit and creation and filling of Ward Program Administrator positions. By contrast, Clarke was an entry level receptionist/clerk who apparently had never interacted with Governor Gregoire when she was Attorney General. No other witness can provide the information available from Cheryl Strange relating to the conditions at the hospital, need for the 28 Ward Program Administrators, her interactions with Plaintiff and with the hiring manager.

In *Thomas v. Cate*, 715 F. Supp. 2d 1012 (E.D. Cal. 2010), *order clarified*, No. 1:05CV01198LJOJMDHC, 2010 WL 797019 (E.D. Cal. Mar. 5, 2010) in a *habeas* proceeding the petitioner sought to depose the Governor Schwarzenegger. While noting the high-level government official privilege exists, the *Cate* court observed: “But this limitation is not absolute. Depositions of high-ranking officials may be permitted where the official has first-hand knowledge related to the claim being litigated. *See Baine v. Gen. Motors Corp.*, 141 F.R.D. 332, 335 (M.D.Ala.1991); *Church of Scientology of Boston v. IRS*, 138 F.R.D. 9,

12 (D.Mass.1990); *Cnty. Fed. Sav. & Loan Ass'n v. Fed. Home Loan Bank Bd.*, 96 F.R.D. 619, 621 (D.D.C.1983).” *Id.* at 1048. The court found that the parole decision was a collaborative effort, and the necessary evidence was available from others.

In Frank Williams’ case the specific personal interactions between him, Cheryl Strange and Cheryl Strange and Marylouise Jones are specific interactions that cannot be adequately conveyed to the jury absent testimony at trial by Cheryl Strange.

The guidelines laid out in *Thomas v. Cate*, 715 F.Supp 1012 at 1049 are instructive in this case: A party seeking the deposition of a high-ranking government official must show: (1) the official’s testimony is necessary to obtain relevant information that is not available from another source; (2) the official has first-hand information that cannot reasonably be obtained from other sources; (3) the testimony is essential to the case at hand; (4) the deposition would not significantly interfere with the ability of the official to perform the official’s government duties; and (5) the evidence sought is not available through less burdensome means or alternative sources.

Ms. Strange has first-hand information. No other source can address the interactions between Ms. Strange and Frank Williams or provide the context to “all heck was breaking loose” CP 271, 276-400,

281, 292 and why in that environment she felt a person with Mr. Williams' qualities might be particularly well suited in the role of Ward Program Administrator. Cheryl Strange has first-hand knowledge that cannot be obtained from other sources. That Mr. Williams impressed Ms. Strange through the performance of his duties and in his interactions with her and that it motivated her to extend a directive to the hiring coordinator to extend a special invitation to apply for the Ward Program Administrator positions is a critical fact, more so that one of the interactions was observed by Marylouise Jones who immediately engaged Ms. Strange about Mr. Williams. Nothing in the record supports that having Ms. Strange testify at trial via Zoom significantly interferes with her government functions. Nothing short of Ms. Strange's testimony at trial will drive home for the jury the circumstances that spawned the creation of a need for 28 Ward Program Administrators, why she felt Mr. Williams was well suited to meet that need, her interaction with Marylouise Jones to generate a particular invitation to apply to Mr. Williams.

Discussion of the broad right of discovery and court oversight is instructive on this issue, since there appears to be little authority on point for excluding witnesses with first-hand knowledge from testifying at trial for their convenience. The plain, unambiguous language of CR 26(c) provides courts with broad discretion to tailor relief regarding the scope of

discovery. Indeed, “[CR] 26(c) was adopted as a safeguard for the protection of parties and witnesses in view of the almost unlimited right of discovery given by Rule 26(b)(1). The provision emphasizes the complete control that the court has over the discovery process.” 8A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & RICHARD L. MARCUS, FEDERAL PRACTICE AND PROCEDURE § 2036 (2010) (footnote omitted).<sup>12</sup> CR 26(c) allows the court to “make *any order which justice requires* to protect a party or person from annoyance [or] embarrassment.” CR 26(c) (emphasis added). The plain meaning of CR 26(c) unambiguously provides courts significant authority to craft various remedies to tailor the discovery process. *See King v. Olympic Pipeline Co.*, 104 Wn.App. 338, 371, 16 P.3d 45 (2000) (“Both the rule and the case law thus provide a trial court with substantial latitude to decide when a protective order is appropriate and what degree of protection is required given the unique character of the discovery process.”); *Miscellaneous Docket Matter No. 1 v. Miscellaneous Docket Matter No. 2*, 197 F.3d 922, 925 (8th Cir.1999) (“Because of liberal discovery and the potential for abuse, the federal rules confer broad discretion on the district court to

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<sup>12</sup> CR 26(c) governs protective orders. This rule's text and substance is nearly identical to the comparable federal rule. Thus, federal interpretations of the rule provide helpful guidance and are frequently cited as persuasive. 3A KARL B. TEGLAND, WASHINGTON PRACTICE: RULES PRACTICE CR 1 author's cmt. 2, at 12 (6th ed.2013).

decide when a protective order is appropriate, and what degree of protection is required.”). Thus, a court may be as inventive as the necessities of a particular case require in order to achieve the benign purposes of the rule. *Brulotte v. Regimbal*, 368 F.2d 1003 (9th Cir.1966). See: *Dalsing v. Pierce County*, 190 Wn.App. 251, 262–63, 357 P.3d 80, 86, (2015).

The court must not lose sight that discovery and testimony in a civil case is different from information sought pursuant to other rights such as the Public Records Act, RCW 42.56 *et seq.* (“PRA”) *O'Connor v. Washington State Dept. of Social and Health Services*, 143 Wn.2d 895, 25 P.3d 426 (2001) acknowledged that citizens have the right to access records under the PRA that supplements rather than restricts their right of access under civil discovery rules.

**4. In the Event the Job Applicant Prevails on Remand, Attorneys’ Fees Should be Awarded for Work on this Appeal.**


RCW 49.60.030(2), the remedial provision of RCW Ch. 49.60, provides the cost of suit including a reasonable attorney's fees. *Xieng v. Peoples Nat. Bank of Washington*, 120 Wn. 2d 512, 526-27, 844 P.2d 389, 396-97 (1993). Pursuant to RAP 18.1 Plaintiff requests that attorneys’ fees be awarded for this appeal should he ultimately prevail on remand.

## CONCLUSION

This court should remand the case for a new trial. Permit the Job Applicant to call Cheryl Strange as a witness in the retrial. The court should approve an award of attorneys' fees in the event the Job Applicant ultimately prevails.

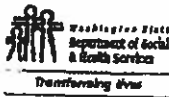
RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of November 2021. Counsel certifies that this brief contains 11,984 words and is compliance with RAP 18.16(2)(c)(2).

KRAM & WOOSTER, P.S.

  
\_\_\_\_\_  
Richard H. Wooster, WSBA 13752  
Attorney for Appellant



## **APPENDIX 1**



# Washington Management Service (WMS) DSHS Position Description

HUMAN RESOURCES  
RECEIVED  
SEP 1 2016

**Instructions:** A current WMS position description is required for all positions. The supervisor reviews or creates a position description when: establishing a new position; prior to filling a vacant position; when transitioning a position from Washington General Service to Washington Management Service; when there is a significant change in duties or responsibilities, or when the duties assigned to the position change due to program need. Each PDF must reflect the primary duties, responsibilities, essential functions, skills and abilities, and other job-related requirements of a position.

For additional assistance / instructions on completing this form, please click [here](#).

<b>I. Position Information</b>		
1. HRMS 8-DIGIT POSITION NUMBER <u>71050002</u>	2. 4-DIGIT LEGACY NUMBER <u>2 A01E</u>	3. ORGANIZATIONAL CHART(S) ATTACHED <input type="checkbox"/> Current <input checked="" type="checkbox"/> Proposed
4. ACTION <input checked="" type="checkbox"/> Establish <input type="checkbox"/> Inclusion of existing WGS position <input type="checkbox"/> Update <input type="checkbox"/> Re-evaluation of existing WMS position		
5. SUB-AGENCY / DIVISION / UNIT		6. POSITION LOCATION (ADDRESS) <u>9601 Stellacoom Blvd SW Tacoma, WA 98498</u>
7. CURRENT BAND		8. CURRENT WORKING TITLE <u>Ward Program Administrator</u>
9. PROPOSED BAND <u>WMS2</u>		10. PROPOSED WORKING TITLE <u>Ward Program Administrator</u>
11. JVAC CODE	12. MARKET SEGMENT	13. Is the position designated emergent per DSHS Emergent Ops Plan? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
14. INCUMBENT NAME IF FILLED <u>N/A</u>		15. DATE OF LAST REVIEW <u>N/A</u>
17. HR REPRESENTATIVE'S NAME		16. SUPERVISOR'S POSITION NUMBER (8-DIGIT AND LEGACY) <u>70126695 / QC21</u>
		18. IS BACKGROUND CHECK REQUIRED PER DSHS AP 18.63? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		19. PROJECT? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No HR ASSIGNED PROJECT NUMBER:
<b>II. WMS Coordinator (only)</b>		
1. Banding Committee Evaluation (JVAC and Points) <u>W2B_560-Band 2</u>		
2. Assigned Market segment <u>Health Care Administration</u>		
3. JVAC Chart Used: <input checked="" type="checkbox"/> Traditional Manager <input type="checkbox"/> Individual Contributor		
4. Inclusion Criteria: Primary (check one): <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 5 Secondary (check one): <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5		
5. FLSA status <u>OT Exempt</u>		
6. Management Type: <input checked="" type="checkbox"/> Manager <input type="checkbox"/> Policy/Advisor <input type="checkbox"/> Consultant/Technical Expert		
7. Committee members:		
First name: _____		
Second name: _____		
Third name: _____		
8. WMS Coordinator Initials <u>EA</u>		
9. Date Position Evaluated <u>09/02/16</u>		
10. RISK CODE		
<input checked="" type="checkbox"/> 4902-0068 <input type="checkbox"/> 5307-0141 <input type="checkbox"/> 5307-01-0167 <input type="checkbox"/> 5300-0448 <input type="checkbox"/> 7204-0341 <input type="checkbox"/> 7200-0312 <input type="checkbox"/> 7201-0304 <input type="checkbox"/> 7203-0311 <input type="checkbox"/> 6901-0220 <input type="checkbox"/> Other:		

#### **III. Organizational Structure**

Summarize the functions of the position's division/unit and how this position fits into the agency structure (attach an organizational chart).

This position is one of twenty-eight (28) Ward Program Administrators (WPA) that fulfill a critical role in Western State Hospital (WSH)'s mission of promoting patient recovery and DSHS' mission of transforming lives by overseeing all operations and coordinating treatment programs (24/7) on a designated ward in the Psychiatric Treatment and Recovery Center—East Campus. The WPA reports directly to the Center Director (WMS3 position) who reports to the Chief Clinical Officer. This position is instrumental in carrying out the mission, vision, and values of WSH, BHA, and DSHS.

The WPA provides administrative supervision for treatment team members, including: (1) Ward Psychiatrist, (1) Ward Psychologist, (2) Ward Social Workers, (3) Ward RN3s, Rehabilitation staff (if assigned to the ward), and (1) Ward Clerk (OA3). The WPA also has approximately fifty (50) staff from the different disciplines that they provide administrative oversight, and non-clinical work direction covering 3 work shifts, 24 hours a day, seven days a week. This position plays a critical role in maintaining the safety of all staff and patients on that ward. The WPA manages the day-to-day operations, ensuring compliance with hospital policies/procedures, adherence to applicable legal and regulatory body standards, and fulfillment of the hospital's current Systems Improvement Agreement requirements.

#### **IV. Position Objectives**

Describe the position's main purpose, include what the position is required to accomplish and major outcomes produced. Summarize the scope of impact, responsibilities, and how the position supports/contributes to the mission of the organization.

The WPA of Psychiatric Treatment and Recovery Center—East Campus provides direction, plans, organizes, and administers the operation of the ward therapeutic program. This position is directly accountable to ensure treatment services and the ward operations are in alignment with the hospital's policies and procedures, as well as state and federal regulations, including CMS (Centers for Medicare and Medicaid Services) Standards. The WPA also ensures collaboration between treatment providers and support staff. Although the WPA does not provide clinical oversight, this position supports the coordination of disciplines to ensure that the best clinical practice standards are occurring to maximize patient recovery, promote discharge readiness, and maintain a safe and secure therapeutic environment. This position is responsible to assume all operational leadership activities in the management of the assigned ward and to work in collaboration with all discipline supervisors in carrying out the established mission, vision, and values of Western State Hospital.

This position also is accountable for auditing non-clinical performance measures and outcomes, including key safety and CMS certification compliance measures. This position requires the continual exercise of independent judgment in matters related to ward operations and management of ward personnel and other resources.

As needed this position has delegated authority of the Psychiatric Treatment and Recovery Center—East Campus Center Director.

<b>V. Assigned Work Activities (Duties and Tasks)</b>	
Percent %	Describe the duties and tasks. Functions listed in this section are primary duties and are fundamental to why the position exists. The Percentage of time under "Percentage" below must equal 100%. <u>Underline the essential function of the position.</u> For more guidance, see <u>Essential Functions Guide</u> (DOP).
45%	<b><u>Ward Program/Patient Care:</u></b> <ul style="list-style-type: none"><li>• <u>Plans, leads, organizes and directs the work performed by the staff</u> assigned to the ward.</li><li>• <u>Ensures that ward operations and services adhere to hospital policies/procedures and CMS Conditions of Participation, and other regulatory bodies.</u></li><li>• <u>Ensures ward physical environment is safe and clean</u>, including coordinating repairs and addressing emergent issues to prevent harm and/or a reduction in quality care. This includes <u>conducting Environment of Care rounding</u> in conjunction with facilities management to identify and address safety hazards.</li></ul>

	<ul style="list-style-type: none"> <li>• <u>Is responsible to ensure the ward's therapeutic program and active treatment services address each patient's individualized care needs as determined by clinical providers. Coordinates with Recovery Center Manager regarding off-ward treatment services. In collaboration with nursing and rehabilitation staff, assists in planning, developing and ensuring implementation of a program for evening, weekend, and holiday treatment and/or recreation activities.</u></li> <li>• <u>Ensures that patients' treatment plans are completed and on time, per hospital policy. This includes collaborating with center-based treatment plan quality coordinator to ensure quality.</u></li> <li>• <u>Schedules/Coordinates ward-based meetings (e.g., Evaluation and Treatment Conferences, inter-shift and morning reports, Multidisciplinary Evaluation of Treatment meetings) to ensure continuity of care between disciplines and across shifts.</u></li> <li>• <u>Actively ensures the safety of the ward through coordination of the ward's efforts to reduce patient violence and to utilize seclusion/restraint only during situations of imminent danger in which all other less restrictive interventions have failed.</u></li> <li>• <u>Safeguards the rights of patients and takes active steps to prevent patient abuse and neglect. Responds to patient complaints in a manner consistent with hospital policy.</u></li> <li>• <u>Recognizes that exposure to violence may be experienced as traumatic to many patients and staff, and ensures that individuals suffering traumatic effects are referred for appropriate professional services.</u></li> <li>• <u>Is accountable for ensuring that all ward resources are utilized efficiently and to maximize patient care and safety.</u></li> <li>• <u>Ensures that each patient's clinical record and associated supporting documentation is completed per policy.</u></li> </ul>
35%	<u>Staffing/Supervision:</u> <ul style="list-style-type: none"> <li>• <u>Is accountable for creating and maintaining an efficient interdisciplinary process, a cohesive treatment team, and harmonious work environment. Initiates, establishes, and maintains effective work relations.</u></li> <li>• <u>Provides operational oversight and leadership of the ward; administratively supervises medical, psychiatric, psychology, nursing, rehabilitation, and social work ward-based staff. Supports the completion of performance evaluations consistent with hospital standards. This includes writing the operational performance portion of the evaluation while coordinating with clinical discipline supervisors, who will provide clinical competency assessments and related clinical performance data for the evaluation.</u></li> <li>• <u>Collaborates with clinical discipline supervisors to ensure that clinical services meet professional discipline standards and are recovery-oriented. Provides corrective action as needed for personnel related to operational performance issues. Supports discipline supervisors as needed in corrective action related to clinical service performance.</u></li> <li>• <u>Has oversight and coordinates with clinical discipline supervisors regarding employee scheduled and unscheduled leave to ensure that staff absences do not disrupt patient care.</u></li> <li>• <u>Maintains the highest standards of personal/professional and ethical conduct and support the State's goals for a diverse workforce. Leads the Ward Program area's effort to ensure diversity, inclusion, equity and cultural competencies are fully implemented.</u></li> </ul>
15%	<u>Quality Assurance/Additional Duties:</u> <ul style="list-style-type: none"> <li>• <u>Conducts program evaluations and non-clinical quality audits, providing timely reports to Center Director. In collaboration with Quality Assurance Department, uses data to promote continuous quality improvement.</u></li> <li>• <u>Serves as a member on the center-based Management Team and actively participates in hospital-wide performance improvement activities as well as Systems Improvement Agreement Action Plan.</u></li> <li>• <u>Conducts investigations and specialized projects at the Center Director's request.</u></li> <li>• <u>Works collaboratively with Nursing Shift Managers and other multidisciplinary staff to ensure safe, coordinated care 24/7.</u></li> <li>• <u>Promotes fiscal responsibility. Manages ward budgets; e.g., incentive funds therapeutic funds, program supplies, behavior support funds, and general ward funds.</u></li> <li>• <u>Schedules and ensures that staff training is completed as needed to address staff competencies or knowledge gaps regarding maintaining care that adheres to CMS standards and hospital policies/procedures.</u></li> </ul>

5 %	Other duties as assigned.
VI. Accountability - Scope of Control and Influence	
Accountability	

Describe the scope of accountability.

This position is responsible for the entirety (24/7) of operations and administrative processes on a 30-bed psychiatric unit. This includes administrative oversight of approximately 50 staff of a 24/7 facility, and collaboration with care providers to ensure treatment that is provided adheres to CMS standards and WSH policies/procedures. The WPA also plays a critical role in the hospital's quality improvement activities and directs critical tasks needed to help the hospital adhere to federal standards and regulations.

Provide examples of the resources and/or policies that are controlled and/or influenced.

This position has broad influence on the operation of the Psychiatric Treatment and Recovery Center program and the hospital. This position has direct control over the operations and coordination of clinical care of 30 psychiatric patients.

Describe the potential impact of error or consequence of error (impacts unit, division, agency state)

Ineffectual ward program administration would have dire consequences on the care and safety of patients on the unit, and may adversely affect the wellbeing of staff and patients throughout Western State Hospital. If the therapeutic milieu is not effective in promoting recovery, patients could languish in the state hospital, which would be a violation of their rights and prevent other individuals who need inpatient psychiatric care from receiving these services. Ineffectual ward administration also prevents the coordination of clinical care to promote patient recovery and can lead to significant safety lapses, putting the health of patients and staff at risk.

#### Financial Dimensions

Describe the type and annual amount of all monies that the position directly controls. Identify other revenue sources managed by the position and what type of influence/impact it has over those sources.

Operating budget controlled.

Manages ward budgets; e.g., incentive funds therapeutic funds, program supplies, behavior support funds, and general ward funds.

Other financial influences/impacts:

Ward-based accountability and leadership are primary factors in helping the state hospital maintain CMS certification thereby ensuring that millions of dollars of federal funding continue to be provided to Washington State.

#### VII. Position Responsibility

a. Supervisory Position: ☒ Yes ☐ No

If yes, list total full time equivalents (FTE's) managed and highest position title.

(1) Ward Psychiatrist, (1) Ward Psychologist, (2) Social Worker, (3) RN3's, and (1) Ward Clerk (OA3)

b. Individual contributor ☐ Yes ☒ No

If yes, what is the area of specialty or expertise?

N/A

#### VIII. Policy Making and Policy Impact

Explain the position's policy impact (applying, developing or determining how the agency will implement).

The WPA position has the authority to direct staff operations, ensuring the hospital's compliance with CMS standards as well as other state and federal regulations.

Is the position responsible for making significant recommendations due to expertise or knowledge? If yes provide examples of the types of recommendations made and to whom.

The WPA position will utilize operational knowledge to coordinate safe therapeutic programming.

Explain the major decision-making responsibilities this position has full authority to make.

The WPA has the responsibility to make critical decisions regarding operations to support therapeutic programming, non-clinical operations, and scheduling of staff. Will also be responsible for making decisions that impact patient and staff safety and ensure patients' rights.

Describe whether decisions are of a tactical or strategic nature and how decisions are made. For example, is there known precedent, is it somewhat unfamiliar, or unknown and unexplored?

This involves both tactical and strategic decisions. The WPA will gain input from ward treatment providers on all decisions which involve operations that facilitate clinical care.

What are the risks or consequences of the recommendations or decisions?

Decisions by the WPA directly impact the safety and well-being of all patients and staff on the assigned ward. Ineffective decisions regarding ward operations may place the hospital's federal funding at risk and conflict with state and federal regulations.

#### **IX. Qualification - Knowledge, Skills and Abilities**

List the education, experience, licenses, certifications, and competencies.

Required education, experience, and competencies:

A Master's degree in Psychology, Sociology, Social Work, Social Sciences, Nursing, or in an allied field, AND three years of professional experience in case work, social services, planning, directing, and/or coordinating group and activities in an institution setting or experience in a related field AND three years of supervisory and/or managerial experience, including program administration, personnel management, and budgeting.

OR

A Bachelor's degree in Psychology, Sociology, Social Work, Social Sciences, Nursing, or in an allied field, AND three years of professional experience in case work, social services, planning, directing, and/or coordinating group and activities in an institution setting or experience in a related field AND five years of supervisory and/or managerial experience, including program administration, personnel management, and budgeting.

Preferred / desired education, experience and competencies

- Master's degree or higher in a clinical field and clinical licensure in one's specialty.
- Demonstrate leadership and management skills and abilities, including: good judgment, independent problem solving, decision-making, conflict resolution, time management, excellent oral and written communication, relationship skills, program management, budgeting, and personnel management. Ability to lead others through modeling and provision of accurate, constructive feedback.
- Working knowledge of Federal and State laws and standards (e.g., TJC, CMS) standards relating to psychiatric hospitals
- Demonstrate core understanding of psychiatric recovery principles and ability to put them into practice to ensure recovery-oriented care for all patients on assigned ward.
- Ability to set and maintain appropriate priorities for self and ward.
- Ability to maintain high standards of professional integrity and to ensure such standards are maintained by all ward staff.
- Ability to work collaboratively and interact respectfully with diverse staff and patients to accomplish the hospital's mission.
- Leadership and management skills and abilities, including: good judgment, independent problem solving, making conflict resolution, time management, excellent oral and written communication, and relationship skills. Ability to lead others through modeling and provision of accurate and constructive feedback.

- Computer skills (Word, Outlook, intra-and internet, Visio, Excel)

#### **Special Requirements / Conditions of Employment**

List special requirements or conditions of employment beyond the qualifications above.

The incumbent must pass the DSHS "Criminal Background Check" requirements for DSHS employees who work with vulnerable adults under the Secretaries Order. Continuous employment in this position is contingent on the incumbents continued ability to meet and pass these background requirements.

#### **Working Conditions**

Work setting, including hazards:	This position involves working with staff from diverse backgrounds and disciplines. It may include assisting in the management of individuals who are engaging in dangerous assaultive behaviors due to experiencing an acute exacerbation of their psychiatric symptoms.
Work schedule:	8:00am-4:30pm is basic schedule however this position does require managing ward operations at times on alternative shifts. It includes regular scheduled meetings, and work hours periodically with staff on Swing and Night shifts.
Travel requirements	Work station is Western State Hospital. No other significant travel beyond this agency is anticipated.
Tools and equipment	No specialized equipment
Other:	

#### **Management Definition**

- ☐ Formulates statewide policy or directs the work of an agency or agency subdivision
- ☒ Administers one or more statewide policies or programs of an agency or agency subdivision
- ☒ Manages, administers and controls a local branch office of an agency subdivision, including the physical, financial or personnel resources.
- ☐ Has substantial responsibility in personnel administration, legislative relations, public information, or the preparation and administration of budgets.
- ☒ Functions above the first level of supervision and exercises authority that is not merely routine or clerical in nature and requires the consistent use of independent judgment.

Explain how the position meets the above definition(s) you checked. Provide examples:

The WPA provides directs, plans, organizes, and administers the operation of the ward therapeutic program and operations. This position is directly accountable to ensure treatment services and the ward operations are in alignment with the hospital's policies and procedures, as well as state and federal regulations, including CMS Standards.

This position also is accountable for auditing performance measures and outcomes, including key safety and CMS certification compliance measures. This position requires the continual exercise of independent judgment in matters related to ward operations and management of ward personnel and other resources.

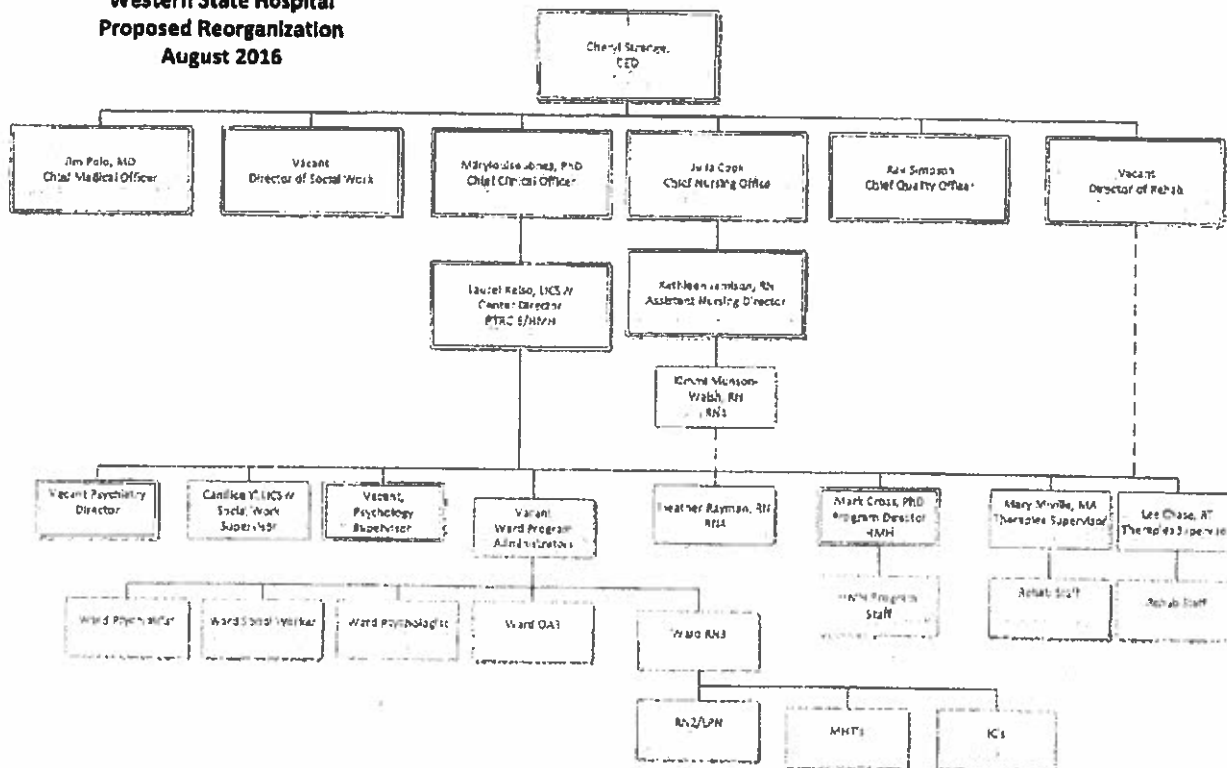
The WPA provides administrative supervision for treatment team members, including: (1) Ward Psychiatrist, (1) Ward Psychologist, (2) Ward Social Workers, (3) Ward RN3s, Rehabilitation staff (if assigned to the ward), and (1) Ward Clerk (OA3). The WPA also has approximately fifty (50) staff from

the different disciplines that they provide administrative oversight, and non-clinical work direction covering 3 work shifts, 24 hours a day, seven days a week. This position plays a critical role in maintaining the safety of all staff and patients on that ward. The WPA manages the day-to-day operations, ensuring compliance with hospital policies/procedures, adherence to applicable legal and regulatory body standards, and fulfillment of the hospital's current Systems Improvement Agreement requirements.

Assistant Secretary / Designee Acknowledgement		
<input type="checkbox"/> Approved for review by the WMS Committee. Comments:		
<input type="checkbox"/> Not approved for review by the WMS Committee. Indicate reasons:		
SUPERVISOR'S SIGNATURE (REQUIRED)	DATE	SUPERVISOR'S PRINTED NAME AND TITLE
XIII. Acknowledgement of Position Description The signatures below indicate that the job duties as defined above are an accurate reflection of the work performed by this position.		
SUPERVISOR'S SIGNATURE (REQUIRED)	DATE	SUPERVISOR'S PRINTED NAME AND TITLE
APPOINTING AUTHORITY'S SIGNATURE (REQUIRED)	DATE	APPOINTING AUTHORITY'S PRINTED NAME AND TITLE
As the incumbent in this position, I have received a copy of this position description.		
EMPLOYEE'S SIGNATURE	DATE	



**Western State Hospital  
Proposed Reorganization  
August 2016**



# Washington Management Service Salary Structure

Effective July 1, 2020

**Important Note:** The 3% general wage increase for the WMS salary schedule was adopted and approved at the June 13, 2019 Director's Meeting, effective July 1, 2020. Per the Governor's Directive 20-08, issued on June 17, 2020, non-represented WMS employees making more than \$53,000 annually are not eligible for the general wage increase.



State of Washington  
Dept. of Social and Health Services  
invites applications for the position of:

careers.wa.gov

## Ward Administrator

**SALARY:** \$85,000.00 - \$93,000.00 Annually

**OPENING DATE:** 01/31/17

**CLOSING DATE:** 02/05/17 11:59 PM

### DESCRIPTION:

Ward Administrator

The primary goal of any good leader should be to make something better. It doesn't really matter what business that leader is in, if he or she can build and maintain an energetic team, create a work environment founded on trust, safety, and respect, keep the lines of communication open and honest and consistently move an organization in a positive direction, the end product will ultimately be better.

Western State Hospital (WSH) is hiring 28 **Ward Administrators**. These key leadership roles provide administrative supervision for treatment team members that will include psychiatrists, psychologists, social workers and nurses as well as approximately 50 staff from different disciplines covering 3 shifts, 24 hours a day, 7 days a week. Ward Administrators promote patient recovery and the DSHS mission of transforming lives by overseeing all operations and coordinating treatment programs on a designated ward. The Administrator is expected to manage the day-to-day operations of the ward, ensuring compliance with hospital policies and procedures, adherence to legal and regulatory body standards and fulfillment of the current Systems Improvement Agreement requirements with the Centers for Medicare and Medicaid Services (CMS). You must be dedicated to championing for Western State Hospital's commitment to focus on ensuring safety, security, active treatment, and quality care.

These are not jobs for managers who think and act in the status quo. The executive leadership expectation of the Administrators is to make ward operations seamless and well coordinated while promoting a safe and secure therapeutic environment that benefits staff and patients alike. In other words, we need a leader who can make things better.

### This position is responsible for:

Planning, organizing and administering the operation of the ward therapeutic program.

Ensuring treatment services and the ward operations are in alignment with the hospital's policies and procedures.

Ensuring collaboration between treatment providers and support staff.

Supporting the coordination of disciplines to ensure that the best clinical practice standards are occurring to maximize patient recovery and promote discharge readiness.

Assuming all operational leadership activities in the management of the assigned ward.

Collaborating with all discipline supervisors in carrying out the mission, vision and values of Western State Hospital.

### A sampling of specific duties:

Ward and Patient Care: Planning, leading, organizing and directing the work performed by staff. Ensuring ward operations and services adhere to hospital and CMS policies and

procedures. Ensuring ward physical environment is safe and clean. Confirming the ward's therapeutic program and active treatment services address individualized care needs as determined by the clinical providers. Safeguarding the rights of patients and taking active steps to prevent abuse and neglect.

**Staffing and Supervision:** Creating and maintaining an efficient interdisciplinary process. Providing operational oversight and leadership of the ward. Administratively supervise medical, psychiatric, psychological, nursing, rehabilitation and social work ward-based staff. Collaborating with clinical discipline supervisors to make sure clinical services meet professional discipline standards and are recovery-oriented.

**Quality Assurance:** Conducting program evaluations and non-clinical quality audits. Using data to promote continuous quality improvement. Actively participate in hospital wide performance improvement activities. Promotes fiscal responsibility.

#### **What we are looking for:**

Hands-on supervisory and managerial experience, including program administration, personnel management, and budgeting. Strong leadership skills including the ability to clearly communicate and collaborate with others.

A Master's or Bachelor's Degree in psychology, sociology, social work, social sciences, nursing or an aligned field. Preference may be given to candidates with a graduate degree in a clinical field with licensure and a core understanding of psychiatric patient care.

Substantive professional experience in case work, social services, planning, directing and/or coordinating groups and activities in an institution setting. Knowledge of Federal and state laws and standards relating to psychiatric hospitals – i.e. TJC, CMS.

#### **Application Process:**

Please attach a chronological order resume describing your education and work history and a letter of interest addressing items mentioned in this announcement. You are encouraged to contact the Recruiter, **Lindsey Dicus** directly either via email [Lindsey.dicus@dshs.wa.gov](mailto:Lindsey.dicus@dshs.wa.gov) or phone (360) 890-5962 if you have any questions.

The hiring manager reserves the right to review application materials and make a hiring decision at any point during the recruitment process. Applicants will be reviewed on a daily basis. It is in the best interest of the applicant to apply as soon as possible.

***This announcement will be used to fill multiple vacancies.***

#### **Who we are:**

To learn more about Western State Hospital and how our staff makes a difference in transforming lives click [here](#).

#### **SUPPLEMENTAL INFORMATION:**

At Western State Hospital, you will enjoy a rewarding career with a generous benefits package. These include, but are not limited to: major medical, dental, vision, optional medical flexible spending account, long-term disability, fully funded retirement, savings plan options, life insurance, paid vacation and holidays and continuing education. For more detailed information regarding benefits, please review the benefits tab.

Some jobs may require full criminal background check. This announcement may be used to fill multiple vacancies. Employees driving on state business must have a valid driver's license. Employees driving a privately owned vehicle on state business must have liability insurance on the privately owned vehicle.

Washington State Department of Social & Health Services is an equal opportunity employer and does not discriminate on the basis of age, sex, sexual orientation, gender, gender

3/28/2017

Job Bulletin

Identity/expression, marital status, race, creed, color, national origin, religion or beliefs, political affiliation, military status, honorably discharged veteran, Vietnam Era, recently separated or other protected veteran status, the presence of any sensory, mental, physical disability or the use of a trained dog guide or service animal by a person with a disability, equal pay or genetic information. Persons requiring accommodation in the application process or this job announcement in an alternative format may contact the Recruiter at (360) 725-5810. Applicants who are deaf or hard of hearing may call through Washington Relay Service by dialing 7-1-1 or 1-800-833-6384.

If you have questions about this opportunity, please contact Lindsey Dicus at (360) 890-5962 or email [lindsey.dicus@dshs.wa.gov](mailto:lindsey.dicus@dshs.wa.gov).

#WorkAtWestern Click [here](#) to find out more.

15-164

#LI-JB1

**WILLIAMS 000007**

## **Ward Program Administrator (WPA) Frequently Asked Questions**

Why did we decide to develop the Ward Program Administrator position?

Our hospital is under a Systems Improvement Agreement (SIA) with CMS to come into compliance with the CMS Conditions of Participation. The hospital leadership along with our consultants have identified the addition of Ward Program Administrators (WPAs) as a critical priority to address the lack of a single point of accountability at the ward level. They made this suggestion to help WSH better coordinate all services on the wards and make it easier for clinical staff to provide quality care and ensure safety for all patients and staff.

We plan on hiring 28 WPAs beginning mid-September, and this is the first staffing addition of what we hope will be many toward establishing a center-based model of care within our wards.

What will be the role of Ward Program Administrators?

Ward Program Administrators are responsible for the day-to-day operations of their assigned ward. WPAs provide administrative management and support of the ward, 24-hours a day, 7-days a week.

The WPAs promote patient and staff safety and support clinical staff, ensuring the ward runs smoothly and effectively. They have authority to ensure that their ward is in compliance with hospital policies, procedures, CMS Conditions of Participation, and other regulatory compliance bodies. WPAs will help in non-clinical auditing, which will free up valuable clinical staff time, allowing clinical staff to focus on maintaining high standards of clinical care.

WPAs take a leadership role by building and supporting healthy and effective relationships with all ward employees, and they regularly communicate with all ward staff. They respect the multidisciplinary nature of both administrative and clinical treatment operations, ensuring that the ward can effectively serve our patients.

What will NOT be the role of Ward Program Administrators?

WPAs do not provide clinical direction; instead, they coordinate all disciplines to ensure the wards are functional maintained and provide quality care. WPAs ensure that all ward staff are working together in a professional and seamless manner to maximize the patient recovery experience, promote timely deployment of resources to positively impact discharge readiness, and maintain a safe environment.

How is this role different than our former structure of Ward Program Managers?

Years ago, each ward was assigned a "Ward Program Manager," but there were many issues with their roles, responsibilities, and an unclear chain of command. Hospital leadership recently heard feedback from supervisors and their input helped inform the Ward Program Administrator job description.

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

FRANK WILLIAMS	)	Cause No. <b>56240-5-II</b>
Appellants	)	
	)	DECLARATION OF
vs.	)	SERVICE
	)	
STATE OF WASHINGTON,	)	
DEPARTMENT OF SOCIAL &	)	
HEALTH SERVICES	)	
	)	
	)	
Respondents	)	

KNOW ALL PERSONS BY THESE PRESENTS: That I, Connie DeChaux, the undersigned, of Bonney Lake, in the County of Pierce and State of Washington, have declared and do hereby declare:

That I am not a party to the above-entitled action, am over the age required and competent to be a witness;

That on the 5th day of November, 2021, I delivered via Electronic Mail a copy of the following documents:

1. Declaration of Service;
2. Brief of Appellants;

to the following individuals:

Jane.Montes-Hall@ATG.WA.GOV

TOROlVtEF@atg.wa.gov

Aaron.Young1@ATG.WA.GOV

Melissa.kornmann@atg.wa.gov

brendan.lenihan@atg.wa.gov

brian.baker@atg.wa.gov

Kiani.Tarape@ATG.WA.GOV

jeanette.fagerness@atg.wa.gov

I declare under penalty of perjury under the laws of the State of Washington and of the United States that the foregoing is true and correct.

Signed at Tacoma, Pierce County, Washington this 5<sup>th</sup> day of November, 2021.



Connie DeChaux

Kram & Wooster, Attorneys at Law  
1901 South I Street  
Tacoma WA 98405  
(253) 572-4161  
(253) 572-4167 fax



# KRAM AND WOOSTER

November 05, 2021 - 10:06 AM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 56240-5  
**Appellate Court Case Title:** Frank Williams, Appellant v. D.S.H.S., State of Washington, Respondent  
**Superior Court Case Number:** 18-2-08174-8

### The following documents have been uploaded:

- 562405\_Affidavit\_Declaration\_20211105100045D2526581\_6273.pdf  
This File Contains:  
Affidavit/Declaration - Service  
*The Original File Name was Declaration of Service 11-5-21.pdf*
- 562405\_Briefs\_20211105100045D2526581\_5408.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was Appellants Opening Brief.pdf*

### A copy of the uploaded files will be sent to:

- aaron.young1@atg.wa.gov
- brendan.lenihan@atg.wa.gov
- brian.baker@atg.wa.gov
- torolyef@atg.wa.gov

### Comments:

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Sender Name: Richard Wooster - Email: Rich@kjwtlaw.com  
Address:  
1901 S I ST  
TACOMA, WA, 98405-3810  
Phone: 253-572-4161

**Note: The Filing Id is 20211105100045D2526581**

# KRAM AND WOOSTER

November 05, 2021 - 10:06 AM

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Affidavit/Declaration - Service  
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- 562405\_Briefs\_20211105100045D2526581\_5408.pdf  
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